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Floor Debate
March 19, 2012

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PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the forty-sixth day of the One Hundred Second Legislature, Second Session. Our chaplain for today is Father Paul Rutten from Lincoln, Nebraska, Senator Fulton's district. Would you all please rise.

FATHER RUTTEN: (Prayer offered.)

PRESIDENT SHEEHY: Thank you, Father Rutten. I now call to order the forty-sixth day of the One Hundred Second Legislature, Second Session. Senators, please record your presence. Please record, Mr. Clerk.

CLERK: I have a quorum present, Mr. President.

PRESIDENT SHEEHY: Are there corrections for the Journal?

CLERK: I have no corrections, Mr. President.

PRESIDENT SHEEHY: Messages, reports, or announcements?

CLERK: Mr. President, Enrollment and Review reports they've examined and reviewed LB1104 and report it to Select File with E&R amendments, and LB845 to Select File. I have an amendment from Senator Krist to be printed to LB998. New A bill. (Read LB1128A by title for the first time.) And LB131 is reported correctly engrossed. Mr. President, a series of study resolutions: LR489, LR490, LR491, and LR492 are from Senator Adams, and LR493 and LR494 from Senator Dubas. Those will all be referred to Reference. That's all that I have, Mr. President. (Legislative Journal pages 985-988.) [LB1104 LB845 LB998 LB1128A LB131 LR489 LR490 LR491 LR492 LR493 LR494]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign: LR458, LR459, LR460, and LR461. Mr. Clerk, we will move to the first item under legislative confirmation report. [LR458 LR459 LR460 LR461]

CLERK: Mr. President, the Retirement Systems Committee reports on the appointment of Ron Ecklund to the Public Employees Retirement Board. (Legislative Journal page

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903.)

PRESIDENT SHEEHY: Senator Nordquist, you're recognized to open on the Nebraska Retirement Systems Committee confirmation report.

SENATOR NORDQUIST: Good morning, Mr. President and members of the Legislature. The Retirement Systems Committee recently held a confirmation hearing on March 13, 2012, for the appointment of Mr. Ron Ecklund to the Nebraska Public Employees Retirement Board. Mr. Ecklund is a new appointee who has been selected by the Governor to represent the public on the board. Mr. Ecklund is a certified public accountant. He graduated from the University of Nebraska with a B.S. in business in 1972 and an M.B.A. from UNL in 1973. In 1974, he and four other accountants started HBE Becker Meyer Love CPAs accounting firm, which has grown to a staff of nearly 40 employees. He's a past board member of the Lincoln Independent Business Association, the Lincoln Electric System, and the Lincoln Community Foundation. Mr. Ecklund's background and experience as a CPA will make him an exceptionally valuable member of the Nebraska Public Employees Retirement Board, which oversees all of the state retirement plans. The Retirement Committee unanimously voted to move Mr. Ecklund's appointment to the Legislature for confirmation, and I ask for your support in confirming this appointment. Thank you.

PRESIDENT SHEEHY: Thank you, Senator Nordquist. You've heard the opening on the Nebraska Retirement Systems Committee confirmation report. Member requesting to speak, Senator Avery.

SENATOR AVERY: Thank you, Mr. President. Good morning, colleagues. I just want to add my endorsement of this nomination. Ron Ecklund is a constituent of mine in District 28. He is a competent and longtime financial advisor and CPA in this community, long involved in a number of organizations, mostly business and political. I think he would be an excellent member of this board and I urge your approval. Thank you, Mr. President.

PRESIDENT SHEEHY: Thank you, Senator Avery. Senator Ken Haar.

SENATOR HAAR: Mr. President, members of the body, I'd also like to rise in support of Ron Ecklund. I got to know him when I was on the city council during the 1980s and '90s. He continuously puts in many hours of public service. This has been for the city, for the county, and now this for the state. So I highly recommend Ron.

PRESIDENT SHEEHY: Thank you, Senator Haar. Seeing no additional requests to speak, Senator Nordquist, you're recognized to close. Senator Nordquist waives closing. The question before the body is on the adoption of the Nebraska Retirement Systems Committee confirmation report. All those in favor vote yea; opposed, nay. Record, Mr. Clerk.

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CLERK: (Record vote, Legislative Journal page 989.) 37 ayes, 0 nays, Mr. President, on the adoption of the confirmation report.

PRESIDENT SHEEHY: The confirmation report is adopted. (Visitors and doctor of the day introduced.) Continuing with the agenda items, Mr. Clerk, we will now move to General File under Appropriation bills.

CLERK: Mr. President, LB541A is a bill by Senator Campbell. (Read title.) [LB541A]

PRESIDENT SHEEHY: Senator Campbell, you're recognized to open on LB541A. [LB541A]

SENATOR CAMPBELL: Thank you, Mr. President, and good morning, members of the Legislature. LB541A has been a work in progress since LR542. It was one of several bills that the Health and Human Services Committee brought forward to try to make a small investment that might make us a huge return on that investment in the ensuing years. LB541 is a way to contract out with companies who are specialized in helping us look for perhaps lost dollars in our Medicaid program. And we also now have the federal regulations in place that will require the state to do some of the contracting that is in LB541. It is a small investment for the first year and then the second year, and then the percentage of returns has been great, into the millions in other states. We greatly need to look at all avenues to help us bring in good dollars for a Medicaid fund primarily because it will eventually save in General Fund dollars. So I would urge your support of LB541A. [LB541A LB541]

PRESIDENT SHEEHY: Thank you, Senator Campbell. You've heard the opening of LB541A. Seeing no requests to speak, Senator Campbell, you're recognized to close. Senator Campbell waives closing. The question before the body is on the advancement of LB541A. All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB541A]

CLERK: 37 ayes, 0 nays, Mr. President, on the advancement of LB541A. [LB541A]

PRESIDENT SHEEHY: LB541A advances. We will now proceed to LB985A. [LB541A LB985A]

CLERK: LB985A, Senator Larson, I have Enrollment and Review amendments. (ER189, Legislative Journal page 675.) [LB985A]

PRESIDENT SHEEHY: Senator Larson. [LB985A]

SENATOR LARSON: Mr. President, I move LB985A to...I move the E&R amendments to LB985A be adopted. [LB985A]

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PRESIDENT SHEEHY: You have heard the motion on the adoption of the amendments. All those in favor say aye. Opposed, nay. They are adopted. [LB985A]

CLERK: Senator Harms would move to amend, AM2366. (Legislative Journal page 886.) [LB985A]

PRESIDENT SHEEHY: Senator Harms, you're recognized to open on AM2366. [LB985A]

SENATOR HARMS: Thank you, Mr. President, colleagues. Let me give you a little background for this motion so you can have a better understanding of why I'm doing this. In Scottsbluff in the Judicial District 12, we have 300 juveniles that are on probation during 2012. We have 50...during that span of time, we had 50 graduated sanctions that were imposed for technical violations like drugs and other issues that have occurred. We had 46 that had motions to revoke in 2011 due to violation of the court orders. We've had 72 who were placed on the Department of Health and Human Services and the OJS in 2011 to access services. The problem that we have in Judicial District 12 is that there is links missing in the continuation of care that causes delay in the services and, in many cases, just doesn't give you the services. It's not there. And so these teenagers are falling through the cracks, the issues are becoming more difficult for the judges. And so what we're really asking for is to provide some assistance to District 12 in the following area: We'd like to have tracked services. And these are...these assist the probationary...tracker assistance actually assists the probationary officers in such areas as, one, in the schools. They go into the schools and begin to find out what's happening with that teenager, what's going on, whether are attending problem, whether they are causing difficulties, and whether there's even suspect of overuse of alcohol or drugs that seem to be appearing. They have issues with transportation. They have issues with, a lot of teenagers, in job search to give them some meaningful way to get back into a world where somebody might care about them. They have curfew check issues. They're just almost...we just about don't have them. We have tutoring services that we don't have where other places do have. And we have found by being able to do into the school system and providing tutorial services, tutoring services, and these kids start to feel some success, all of a sudden things begin to change for them. They have a positive thrust in their life, they're doing better in school, and even their friends start to change in this process. Outpatient treatment. We have one day, if we can afford to do one day, once a week of outpatient, but we don't have and what's missing is the intensive outpatient service which is four times a week. And if you recall, colleagues, when we did the underage drinking bill that we passed here that I had introduced, western Nebraska, Judicial District 12 and that whole area, was number one in the state in underage drinking. They're at the top of the list in teenage pregnancies. So that list just goes on and there's no question in our mind that we need to have intensive outpatient services for a lot of those teens. If we don't, then the other end, they're simply

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going to be in the other side of the courts, maybe in jail or in prison. We have no real mental health services for these kids by the large number of teenagers that we have. And we have no evening reporting centers in our area. That gives you the background of why I stand before you to ask you to support this. Now let me give you how this actually occurs. The total cost for this would be \$1,250,567, which is a transfer from the Department of Health and Human Services, and this is what it would give us. In our state office, because when you add Judicial District 12 and the other pilot program I think in North Platte and McCook and that area, you're going to need a juvenile training specialist, you'll need a funding specialist, and we need a new...and then the new staff, startups with the computers, and just the general things you have to have in your office. And for then the judicial district you would have a juvenile...a resource supervisor, you'd have a secretary, and you'd have three probationary offices. That's what it's about. It's about trying to provide services. I have talked with the judges, I've talked with the county attorneys, and they are really frustrated. They don't have any way to...they don't know what to do with these teenagers. There's no place to place these teenagers. There's just too many of them. The other side of it is that you're finding a lot of the arrests that are being made for underage drinking does not go through the juvenile courts; they're going to the county courts, and this doesn't even include this number in the 300. So somehow we have to bring that together and get it into a system so that it functions. So I would urge you to support this. I think it's critical for what happens to our teenagers and we need the help. So thank you, Mr. President. [LB985A]

PRESIDENT SHEEHY: Thank you, Senator Harms. You've heard the opening of AM2366 to LB985A. Members requesting to speak: Senator Ashford, followed by Senator Krist. Senator Ashford. [LB985A]

SENATOR ASHFORD: Thank you, Mr. Lieutenant Governor. And I would stand in total agreement with Senator Harms on his amendment. The key to this is that as we transition from the Health and Human Service supervision of delinquent youth to probation, we're seeing a significant savings, in the neighborhood of \$10,000 a day for the Douglas County project because of what's happening. What's happening as these 2,300, approximately 2,300, statewide delinquent juveniles in the Douglas County example, there's 680 or so juveniles that have gone into this program over the last two and a half years, 87 percent of those juveniles are receiving in-home services at a dramatically...at a five times less cost per day than the HHS service for the same youth. As we expand this program to North Platte and Scottsbluff, the 11th Judicial District and the 12th Judicial District, we expect to experience greater savings, but mostly importantly we're going to have a closer relationship, as Senator Harms has suggested, between the judiciary, between these youth, and other services in the community that can be tapped. Senator Harms is absolutely right. We've seen a reduction in community-based services made over the last couple of years as the result of some of this privatization effort. We're now hopefully going to see...as we have done in Douglas County where I think there are over 180 community-based services that are funded

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through the pilot, probation pilot, in Douglas County in some way, shape, or form. We'll be able to slowly see those services reemerge in the 11th Judicial District and the 12th Judicial District. This is both a savings in lives, in futures of these youth, and it's a savings...clearly a savings in dollars. This is a transfer from HHS, and I strongly urge we adopt this amendment. [LB985A]

PRESIDENT SHEEHY: Thank you, Senator Ashford. Senator Krist. [LB985A]

SENATOR KRIST: Thank you, Mr. President. Good morning, Nebraska and colleagues. I just want to remind you that this program was specifically mentioned in the Chief Justice's State of the Judiciary. This is a program that has existed for 30 months, and when it was fully funded was a savings to the state of Nebraska because, as I'll remind you over and over again, when you can access services without making a young person a ward of the state, that's a good thing and it's a savings. And that's what this program does and it's been proven to work in Douglas County as a pilot. We're doing in LB985 is we are extending that pilot program out, reinforcing it in Douglas, sending it out to the North Platte area, and with Senator Harms's amendment, we would be extending it out to Scottsbluff. One quick story that I think you should take to heart: When we were out in Scottsbluff listening to testimony regarding LR37, we had a judge tell us that there really isn't anyplace to put some of these kids except detention, in a detention center. And here's something very sad: They couldn't find orange suits small enough for those kids they were putting there. This program is a good program. Senator Harms's intent with this amendment is to move this program into Scottsbluff so it will be across the state. I urge your support of AM2366 and LB985A. Thank you. [LB985A LB985 LR37]

PRESIDENT SHEEHY: Thank you, Senator Krist. Senator Campbell. [LB985A]

SENATOR CAMPBELL: Good morning, colleagues. I'd like to add my voice to support of Senator Harms's amendment to this. And as Senator Krist said, as we traveled the state, we were privileged to hear from a number of judges. And the story that he illustrated to you gives you some idea of the tenor of the testimony that we heard from the judges. I think it's extremely important that not only do we find out the extent and value of this project in our metropolitan area but that we also have the opportunity to sponsor one in the more rural part of Nebraska which also, I'm making the assumptions, would come under the evaluation and be able to tell us quite a bit about what services are needed for our youth. I wholeheartedly support this program and what Senator Harms is trying to do and certainly what Senator Krist is. Thank you, Mr. President. [LB985A]

PRESIDENT SHEEHY: Thank you, Senator Campbell. Seeing no additional requests to speak, Senator Harms, you're recognized to close on AM2366 to LB985A. [LB985A]

SENATOR HARMS: Thank you, Mr. President. I would urge you to support this. I think

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it's needed and think we'll find the benefits of this once we get it established for teenagers. Thank you, Mr. President. [LB985A]

PRESIDENT SHEEHY: Thank you, Senator Harms. You have heard the closing. The question before the body is on the adoption of AM2366 to LB985A. All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB985A]

CLERK: 39 ayes, 0 nays, Mr. President, on the adoption of Senator Harms's amendment. [LB985A]

PRESIDENT SHEEHY: AM2366 is adopted. [LB985A]

CLERK: Senator Ashford would move to amend with AM2371. (Legislative Journal page 898.) [LB985A]

PRESIDENT SHEEHY: Senator Ashford, you're recognized to open on AM2371. [LB985A]

SENATOR ASHFORD: Thank you, Mr. Lieutenant Governor. And Senator Campbell has made it clear that we need to have an evaluation of these programs, pilot programs, that we've just discussed. And as they are rolled out, this amendment transfers \$226,750 from the Community Corrections Uniform Data Analysis Cash Fund for that purpose. The fund will have...with this transfer will have \$500,000 left going into the next biennium in the fund. And I would recommend that we make this transfer to do this evaluation for these programs. Thank you, Mr. Lieutenant Governor. [LB985A]

PRESIDENT SHEEHY: Thank you, Senator Ashford. You've heard the opening of AM2371 to LB985A. Member requesting to speak, Senator Krist. [LB985A]

SENATOR KRIST: Thank you, Mr. President, and good morning again, Nebraska and colleagues. I urge your support of AM2371. What this actually does is take the fiscal note down to zero with an actual transfer to cover the cost of the program. I thank Senator Ashford for this gesture. And I don't think it's just a gesture. I think it shows the importance of attaching a study program along with every time we have an opportunity in this body in order to justify and to document historically that it's the right way to do business and the right way to spend money. Thank you and I would hope that you would vote green on AM2371 and the underlying LB985A. [LB985A]

PRESIDENT SHEEHY: Thank you, Senator Krist. Seeing no additional requests to speak, Senator Ashford, you're recognized to close on AM2371. Senator Ashford waives closing. The question before the body is on the adoption of AM2371 to LB985A. All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB985A]

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CLERK: 38 ayes, 0 nays, Mr. President, on the adoption of Senator Ashford's amendment. [LB985A]

PRESIDENT SHEEHY: AM2371 is adopted. [LB985A]

CLERK: I have nothing further, Mr. President. [LB985A]

PRESIDENT SHEEHY: Senator Krist, you're recognized for a motion. [LB985A]

CLERK: Senator Larson is excused, Senator, so would move to advance it, please? [LB985A]

SENATOR KRIST: Sure. I recommend that we advance LB985A to E&R for engrossing. [LB985A]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB985A advances. Mr. Clerk, we will now move to item under legislative resolution. [LB985A]

CLERK: Mr. President, LR473 was a resolution initially offered by Senator Avery. It was introduced on March 14. It asks the Legislature to approve a gift from the Norfolk Veterans' Home Heroes Park Foundation to the Norfolk Veterans' Home Heroes Park Project of materials, labor, and in-kind services in excess of \$450,000. [LR473]

PRESIDENT SHEEHY: Senator Avery, you're recognized to open on LR473. [LR473]

SENATOR AVERY: Thank you, Mr. President. The resolution, as the Clerk indicated, seeks approval of a gift of materials, labor, and in-kind services from the Norfolk Veterans' Home Heroes Foundation to the Norfolk Home Heroes Park Project. The Norfolk Veterans' Home Heroes Park Foundation has offered to the Norfolk Veterans' Home a gift of materials, labor, and in-kind services of \$450,000. This gift will be used for Phase I of the Veterans' Home Heroes Park Project. Phase I of the park includes grading, soil preparation work, and overseeding for soil erosion prevention. Phase I of this project will not require the funding of any additional personnel on the part of the veterans' home. The Veterans' Home Heroes Park Foundation will be responsible for all perpetual maintenance of Phase I of the project, excluding normal mowing and snow removal that will be performed by the Norfolk Veterans' Home. The Government Committee held a public hearing on this issue on March 13. At the hearing, Jerry Eisenhower from the veterans' home testified. He talked about the importance of Heroes Park and that it would be the backyard for the veterans' home. Apparently now when veterans go outside for a little fresh air and recreation, they only have available to them the space in the parking lot. This is a worthy project. Mr. Eisenhower believes that the Heroes Parks will be a place for veterans and their families to enjoy the outdoors,

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relaxing in pleasant surroundings. Also testifying at the hearing was Ronald Stauffer who is part of the Heroes Park Foundation. After the hearing, the Government Committee voted unanimously to advance the resolution to the floor. I urge you to give approval of this gift of materials, labor, and in-kind services of \$450,000 to the Norfolk Veterans' Home Heroes Park Project from the Norfolk Veterans' Home Heroes Park Foundation. Thank you, Mr. President. [LR473]

PRESIDENT SHEEHY: Thank you, Senator Avery. You've heard the opening to LR473. Member requesting to speak, Senator Price. [LR473]

SENATOR PRICE: Good morning, Mr. President and members and Nebraska. I stand in strong support as a member of the committee and as a veteran. And just so everybody knows, I'm sure that a lot of people will support this, but it's always a good thing when we can do things not only for the veterans but their families as they go into these homes and now they'll be able to get out. And I really appreciate personally, like at the Grand Island home, that they actually have a small pond that the veterans can go fishing at. And these things are very important because, again, quality of life does dictate. We all like to be able to go outside and enjoy things, and it's a lot better to be able to go outside and enjoy more than a parking lot. And I'd like to say thank you to the foundation and to the people of Norfolk and that community for supporting what is going on there. And it just reinforces once again the great nature of Nebraskans. Thank you, Mr. President. [LR473]

PRESIDENT SHEEHY: Thank you, Senator Price. Senator Carlson. [LR473]

SENATOR CARLSON: Mr. President and members of the Legislature, I also stand in support of LR473. I would like to ask Senator Avery a question if he would yield. [LR473]

PRESIDENT SHEEHY: Senator Avery, would you yield to Senator Carlson? [LR473]

SENATOR AVERY: Yes, I will. [LR473]

SENATOR CARLSON: Senator Avery, when you look at in-kind services, sometimes they might be considered a conservative estimate or maybe even a liberal estimate. I assume in this case the \$450,000 is probably conservative. Can you comment on that, because if this were not done this way and those services hired, what kind of bill would we be looking at? [LR473]

SENATOR AVERY: Well, I am sure the foundation would cover any overage if there is any. When the two individuals appeared before the committee, they were firmly in support of this. It was, in fact, their initiative that launched this project. So I'm confident that if the \$450,000 does not cover it, that they will make up the difference. [LR473]

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SENATOR CARLSON: Well, thank you, Senator Avery. And I think it's important when we have honest, sincere in-kind services that that's as good as cash and maybe even better. So I do stand in support of LR473 and would ask for your support. Thank you. [LR473]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Seeing no additional requests to speak, Senator Avery, you're recognized to close. Senator Avery waives closing. The question before the body is on the adoption of LR473. All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LR473]

CLERK: 37 ayes, 0 nays, Mr. President, on the adoption of LR473. [LR473]

PRESIDENT SHEEHY: LR473 is adopted. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR473. Mr. Clerk, items for the record. [LR473]

CLERK: Thank you, Mr. President. Senator Mello offers LR495 and LR496, both calling for interim studies, both will be referred to Reference. LR497 is by Senator Larson. The resolution will be laid over and considered another time. That's all that I have, Mr. President. Thank you. (Legislative Journal pages 990-992.) [LR495 LR496 LR497]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We will now move to items under General File, 2012 committee priority bills, Wightman division, LB1097. [LB1097]

CLERK: LB1097, a bill by Senator Pirsch. (Read title.) Introduced on January 18 of this year, referred to the Revenue Committee, advanced to General File. At this time I have no amendments, Mr. President. [LB1097]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Pirsch, you're recognized to open on LB1097. [LB1097]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I am the sponsor of LB1097. LB1097, simply put, is a bill that would provide a sales and use tax exemption for a nonprofit--and I emphasize that word--mental health center licensed under the Health Care Facility Licensure Act. As a preliminary matter, I'd like to thank the Revenue Committee for naming it one of its priority bills for the year. It had a...came out of committee with an 8 to 0 vote. I would like to thank the members of that committee for their support, in particular Senators Adams, Brasch, Cornett, Fischer, Hadley, Loudon, and Schumacher. There were no opponents at committee and no neutral testifiers as well. With respect to the bill, it's been said that within the overall tax policy of Nebraska, it has never been the intent of the Legislature to tax nonprofit healthcare. These nonprofit mental health centers continually face increased costs and

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lower reimbursement rates from both the state and federal level. The majority of patients receiving care in these nonprofit mental health clinics are Medicaid patients, and a great number of them children. And recently the Department of Revenue has determined that they should have been paying sales and use tax on purchases. It does not make sound tax policy that we would expect these providers to pay sales and use tax and then turn around and pay those taxes as part of a Medicaid reimbursement. LB1097 would clarify that it is not the intent of the Nebraska Legislature to tax nonprofit healthcare. Now the initiation...I think it's important to point out the initiation of these centers, these clinics and the mental health services they provide, are in response to the Nebraska Legislature's public policy reforms efforts to decrease reliance on very expensive state-operated institutional services. Taxing mental health centers which serve an inherent state interest is indeed inconsistent with the public policy goals laid out in behavioral health reform. The Behavioral Health Reform Act was LB1083 passed just eight years ago by this body. So as we look at the last three years, 25 mental health programs across the state have closed their door or have reduced the size of their program. This has served to reduce the capacity to serve Nebraskans that are in demonstrated need of these services. A major cause for these service closures and reduction is that state provider reimbursement is less than the actual cost of the services, therefore, the losses from the mental health center operations are subsidized by the rest of the nonprofit organizations and its donors. So for many reasons and on many levels, this just...the thought of taxing these nonprofit mental health centers just don't make any sense for Nebraska. So I would ask for your support of LB1097 going forward. Thank you very much. [LB1097]

PRESIDENT SHEEHY: Thank you, Senator Pirsch. You've heard the opening to LB1097. Members requesting to speak are Senator Hadley, followed by Senator Cornett, Senator Pahls, Senator Nordquist, Senator Adams, and Senator Wightman. Senator Hadley. [LB1097]

SENATOR HADLEY: Mr. President, members of the body, good morning. We're ready for a long week, but let's hope that it's a very fruitful week. One of the biggest misconceptions in dealing with taxation in Nebraska is the idea of 501(c)(3) nonprofit organizations. I think there's a general assumption among people that they're exempt from all taxes. That is not true. They are exempt from federal income taxes. We generally exempt them from state income taxes. But they are subject to sales and use tax in the state of Nebraska unless they are specifically exempted in the statutes. And what has been happening, I have talked with the Revenue Department, the courts have basically taken that opinion that if an exemption is not specific in the statutes, then they must collect sales and use tax in the state of Nebraska. When we work with mental health clinics, they are certified by the Department of Health and Human Services. They have their own certification number. They may be owned by a nonprofit hospital that is tax exempt, exempt from sales and use tax, but that is under their own certification number. So the purpose behind this bill is to basically put into statute what has been a

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longstanding policy of the state of Nebraska and this Legislature, which is not to put sales and use tax on nonprofit healthcare. Again, the reason we have to do is because of the opinions of the court that we specifically have to have it in statute that they are exempt. And kind of answering Senator Pahls, because I'm sure he'll have his light on, what we're doing is effectively looking at a lot of sales and use tax items that we didn't look at before because of that concept that if they're not in statute, they have to collect sales and use tax. We will be talking later about these youth sports. It is the same concept there. So, again, I just want to reiterate, 501(c)(3) does not make you automatically exempt from sales and use tax. The Legislature must specifically list you, your organization or your type of business, as being exempt. So I stand in favor of LB1097 and would urge your vote of...green vote on LB1097. Thank you, Mr. President. [LB1097]

PRESIDENT SHEEHY: Thank you, Senator Hadley. Senator Cornett. [LB1097]

SENATOR CORNETT: Yes, I rise in support of LB1097 for the same reasons that we at the Revenue Committee supported Senator Hadley's bill. Senator Hadley has done a very good job of explaining the policy behind this. This primarily is a bill that will give the Department of Revenue clarification that they have asked for as we have had on a number of bills previous to this. I urge the body's support of the bill and thank you. [LB1097]

PRESIDENT SHEEHY: Thank you, Senator Cornett. Senator Pahls. [LB1097]

SENATOR PAHLS: Good morning, Mr. President, members of the...of my birthday party, because we're going to give money away again. Well, thank you, Senator Cornett. An awful lot of good things are coming out of your committee. And I understand. I just...let me ask...well, I'll ask Senator Pirsch. May I? May Senator Pirsch yield? [LB1097]

PRESIDENT SHEEHY: Senator Pirsch, would you yield to Senator Pahls? [LB1097]

SENATOR PIRSCH: Yes, I'd love to. [LB1097]

SENATOR PAHLS: Okay. Senator Pirsch, it's my understanding that this is just a clarification because the Department of Revenue has been reviewing past practices and is that why this bill is being brought forth? [LB1097]

SENATOR PIRSCH: You know, I appreciate Senator Hadley's testimony. It is my understanding that, by and large, these clinics that we're talking about, these nonprofit mental health clinics, have always assumed, by and large, there have been a few exceptions, but by and large have assumed that they were sales and use tax exempt. And so that's not to say that there isn't any, and I've tried to locate an exact figure in

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terms of percentage of those few. I think it's a decided minority who have not assumed that they're sales and use tax free and have paid in. But by and large, I think that they have not been paying in thus far. [LB1097]

SENATOR PAHLS: Okay. And I'm just going to use numbers so it will be easy to figure. Let's say out of ten, there's a possibility one has been paying them in the past and the other nine have not. Would that be...just approximate number? [LB1097]

SENATOR PIRSCH: Well, I hate to venture forward. I've tried to ask but say for your assumption, yeah, that's fine for an assumption. [LB1097]

SENATOR PAHLS: Okay. So some have been paying, quote, these sales taxes and use taxes in the past; some have not. Now we're looking for clarification of the policy, which I have no problem with because that's what I think we ought to be doing. The one question that I do have is, it shows that for the revenue for next year is \$426,000 of next year; the following two years it's \$739,000. So somewhere along the line somebody has figured out how many taxes this would cost us if we literally would eliminate them, by looking at your fiscal note. [LB1097]

SENATOR PIRSCH: That includes everybody going forward, and I think they figured that out by beds. [LB1097]

SENATOR PAHLS: Okay. [LB1097]

SENATOR PIRSCH: So, yeah, that would include everybody. [LB1097]

SENATOR PAHLS: Okay. [LB1097]

SENATOR PIRSCH: Now looking backward and saying of that total population who actually had been, what minority, it may be less than 10 percent. I just don't know. [LB1097]

SENATOR PAHLS: Yes, and I understand. [LB1097]

SENATOR PIRSCH: Yeah. [LB1097]

SENATOR PAHLS: So you're saying it cost about \$1,000 a bed. [LB1097]

SENATOR PIRSCH: You know, I couldn't give you that breakdown right here because there are a number of factors. There's... [LB1097]

SENATOR PAHLS: Well, there are 475...a little over 400 beds and there are...you're asking for \$426,000. So to me that figures out around \$1,000 a bed. [LB1097]

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SENATOR PIRSCH: Maybe in the 2012-2013; it changes over the course of time, of course. [LB1097]

SENATOR PAHLS: Okay. And it apparently is going up. Senator Cornett, please. [LB1097]

PRESIDENT SHEEHY: Senator Cornett, would you yield to Senator Pahls? [LB1097]

SENATOR CORNETT: I'd be happy to. [LB1097]

SENATOR PAHLS: Thank you, Senator. Am I way off base here? [LB1097]

SENATOR CORNETT: Well, it depends on...it was calculated based on the number of these nonprofit beds that are available, but it's not specifically the bed. Where they're running into problems on determining or being able to determine this is you have for-profit hospitals that will have... [LB1097]

SENATOR PAHLS: Okay. [LB1097]

SENATOR CORNETT: ...a floor that is set aside as a nonprofit mental health unit, and they would have to go in and do everything, including like set up a separate meter for determining the sales tax on electricity,... [LB1097]

SENATOR PAHLS: Okay. Sure. [LB1097]

SENATOR CORNETT: ...the gowns. It's more than it's \$1,000 per patient overall exemption. [LB1097]

SENATOR PAHLS: Okay. Okay. And I thank you. That does... [LB1097]

PRESIDENT SHEEHY: One minute. [LB1097]

SENATOR PAHLS: Thank you, Mr. President. That does bring this a little bit more in sync. But again, this, to me, shows you that we do need to review our statutes. And the Department of Revenue apparently is doing their job because they are questioning some of our policies. I don't think they're saying right or wrong. They're just saying, hey, this is how we read the policies, especially with the help of the courts. And, again, I'm talking to those people out there who think that your group deserves exemptions. I encourage you to continue to ask for them because we will eventually need clarification. Keep that in mind. A number of exemptions, people are still up in the air about them. So if you run an organization or a business, etcetera, etcetera, speaking to the people of Nebraska, look at the exemptions, look at the court routes, because that apparently is

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the way to go. [LB1097]

PRESIDENT SHEEHY: Time, Senator. [LB1097]

SENATOR PAHLS: Thank you. [LB1097]

PRESIDENT SHEEHY: Thank you, Senator Pahls. Senator Nordquist. [LB1097]

SENATOR NORDQUIST: Mr. President, members, I rise in strong support of LB1097 for several reasons. First, I think as Senator Pahls rightfully pointed out in his discussion with Senator Pirsch, it's really a clarification. The Department of Revenue took a very strict interpretation of the statute and recently, not that long ago, began sending out notice to providers telling them that they should be paying taxes on this. I think we need to look at this in context of who these providers are and the populations they're serving. Senator Pirsch noted that a large number of these individuals are covered by Medicaid. And as we debate budgets and talk about provider rates, you know, this is coming out of the...essentially the back end of it, and I think we need to keep that in mind. And I think this is a good policy so we're not essentially, you know, giving them, you know, through their provider rates but them taking out of the back end. They're certainly administrative issues here. You know, you think of the examples of tax-exempt hospital systems that also have these facilities and they do bulk purchasing, and it would be awfully difficult to buy a box of multiple reams of paper and say, well, half of this box is for the exempt half of our organization and half is not. I think there's definitely administrative challenges there. And as we move forward with this bill, I think that would help clarify and help simplify for those organizations. And these organizations provide important critical services in our community. They are obviously all 501(c)(3) exempt organizations serving critical purposes. And one that serves east Omaha and many constituents, people in my district, who need services, Catholic Charities is one example. They run, you know, adult and adolescent behavioral health services. They operate the only domestic violence shelter in Douglas County. They have three venues that are licensed as mental health centers. The Omaha Campus for Hope and Columbus treatment center are for homeless or near homeless adults. And then the Journeys Program, which used to be located just a few blocks from my house--they recently moved--serves struggling teens with substance and mental health issues, absolutely critical to the health and well-being of teens in our community and troubled adults with challenges in their lives in our community. So I think this is a great policy to move forward with to clarify. These are...this whole network is obviously a strong public-private partnership, and this exemption I think is right...clarifying, is right in line with the ultimate purpose of these services. So I thank Senator Pirsch for introducing this legislation. Thank you. [LB1097]

PRESIDENT SHEEHY: Thank you, Senator Nordquist. Senator Adams. [LB1097]

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SENATOR ADAMS: Thank you, Mr. President, members. It's already been said. I almost turned my light off because it has been clarified where we're going. But because I, this year, rarely voted to move a Revenue bill out, I thought I ought to take this opportunity to explain on this one why I did--for fiscal, legal, and practical reasons. Fiscally, we really haven't collected this, really haven't collected it. Legally, take a look at the bill. Look at current statute and look at that long list of everything that we currently exempt, and ask yourself, if you were writing it, would you have included mental health clinics in there. I think you would have quickly said, yes, why isn't it there. Well, it isn't. And properly so, the Department of Revenue is saying if it's not there literally, then it's not there, then it gets taxed. And from a practical standpoint you have a facility, some things are taxed, some aren't. Those beds that you have where you're providing mental healthcare, everything around it is tax exempt, but now you've got to figure out how you're going to tax that part of your facility. Is it the electric bill? And if so, how much electricity went for the mental health part versus every other part? Administratively, this makes no sense. Legally, look at page 2 of the bill. Look at everything that we exempt and ask yourself did we just miss this one? Yeah. And fiscally I think it's been pointed out to you that the tax bills have just been sent out. So it has lost revenue in the out years if we decide to go ahead and keep collecting it unquestionably. Thank you, Mr. President. [LB1097]

PRESIDENT SHEEHY: Thank you, Senator Adams. Senator Wightman. [LB1097]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. Instead of rising in strong support, maybe, as a member of the Appropriations Committee, I'm rising in guarded support. What's been said here makes sense. On the same time, I'm not quite sure I understand why there's \$426,000 of revenue lost in the current year, whether some of them, it sounded like maybe some small percentage had been charging the sales tax. If Senator Pirsch would answer some questions, I would have a question or two of him. [LB1097]

PRESIDENT SHEEHY: Senator Pirsch, would you yield to Senator Wightman? [LB1097]

SENATOR PIRSCH: Yes, I would. [LB1097]

SENATOR WIGHTMAN: Senator Pirsch, on the \$426,000, is that only what they would have received the rest of this year or is the \$426,000 what will be the loss of revenue from what we've received in prior years? [LB1097]

SENATOR PIRSCH: No, that's specific to the year, so...let me make sure I understand your question. Is your question, does the \$426,000 figure represent the sum total of all clinics that would have been paying into the state coffers come 2012-2013? Is that your question? [LB1097]

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SENATOR WIGHTMAN: Well, for clarification, Senator Pirsch, did I understand you to say that perhaps some small number of these clinics have been charging the sales tax? [LB1097]

SENATOR PIRSCH: Yes, that's right. So the \$426,000 figure would include everybody, those who have been paying...that's my understanding, those who have been paying it in, those few who have been paying in thus far, as well as those who have understood there to not be a sales and use tax and, therefore, have not been paying it. [LB1097]

SENATOR WIGHTMAN: So it is your understanding that the \$426,000 will reduce the bottom line on our green sheet at this point from, depending on which figure we use, \$17,000, \$24,000. Twenty-four thousand dollars, I believe, includes the action that we took on Friday, which was to restore \$9,000 on Select File...or, excuse me, \$9 million on special ed. So I think that is in there and that's why we saw the \$9 million increase. [LB1097]

SENATOR PIRSCH: Yeah. And that occurred last week. Let me check on that to be absolutely certain, but I believe my initial response would be effective of that. That's how the budget has been structured. [LB1097]

SENATOR WIGHTMAN: Okay. I guess I just want everyone to know that we are going to affect that bottom line by the \$426,000. And some of the actions that show on the \$24 million on your green sheet have not passed Final Reading yet, including that \$9 million, \$9-million-something that we did Friday with regard to special ed. So I do intend to support the bill, but I think we need to clarify exactly what is happening. Thank you, Mr. President. Thank you, Senator Pirsch. [LB1097]

SENATOR PIRSCH: Thank you. [LB1097]

PRESIDENT SHEEHY: Thank you, Senator Wightman. Members requesting to speak on LB1097, we have Senator Pirsch, followed by Senator Pahls. Senator Pirsch. [LB1097]

SENATOR PIRSCH: Thank you. I'd just like to talk about some of the concerns that were brought up by Senator Pahls. And I guess I think it's probably a better way...Senator Pahls had said we're giving our money away again. I think that when you look at it conceptually, it may be more helpful to look at it from the reality which is, actually that is money that the state is considering whether or not we should be taking from them. It's money that originates in those mental health clinics. The question here is, should we take from those mental health...should the state pull from the mental health clinics their dollars for our use? And when you look at what they're seeking to accomplish, these nonprofit mental health clinics, and how vital it is to the state, I would

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suggest that we not yank their money. I think that...and I know that there is, you know, quite a few of these, you know, bills that depend and hinge upon the way you conceptualize them. And I certainly understand the other side of the equation. But when you're looking at trying to encourage something that is so crucial to the public's well-being, I don't think that we want to be in the position to come tax that. And I appreciate Senator...I think it was Adams who mentioned about the...mentioned the fiscal, legal, and practical implications of doing so. And let me add just another kind of personal story with respect to a different type of fiscal cost and that's, when it comes to mental health, there's two ways to approach it. One is a more inexpensive way, and that's to be more proactive and engaging people to address their mental health problems. You know, they're not going to go away, I can tell you. And then there's a more expensive way and that is kind of through an emergency type of nonaddressing on a proactive basis of mental health issues. And I can tell you as a prosecutor, you know, just a story that I had, had a gentleman who was picked up by the police who was continually jumping in the middle of rush hour into Saddle Creek, a very busy street in Omaha, right in front of cars. And the cars were screeching on their brakes and I'm sure that had to send the drivers through the roof. But after he would jump in front of the cars and narrowly escape death, he would be seen on the side of the road just laughing and rolling around on the grass. And so the police took him in, and as they were diagnosing him, brought him to the jail. Well, first of all, it tied up all the police hours, Saddle Creek came to a screeching halt, a big to-do. But brought him into the jail. There's a big cost attendant to that. While in the jail cell, he was noncompliant and the jail staff had to at some point in time congregate and go in, and that's always a very dangerous situation. You don't know what you'll face. Well, in the jail, he had urinated into a cup and when they came in, he splashed them with that cup. And so now you've got a severe health issue. You don't know what those jail staff have been exposed to. So what could have been just due to a simple case of somebody not staying on their meds has suddenly turned into leaves of absences and a great expenditure of time and resources... [LB1097]

PRESIDENT SHEEHY: One minute. [LB1097]

SENATOR PIRSCH: ...by governmental entities. And that's just kind of one little example. You know, as a private attorney and working, especially since we've dealt with juvenile courts on such a large basis this session, I can tell you, you know, it affects so many of those cases. So making sure that we have an effective system of delivering mental health services in the state of Nebraska is not only the right thing to do but it's the most cost-effective thing to do for the state. And on that basis, I would again ask you to advance LB1097. [LB1097]

PRESIDENT SHEEHY: Thank you, Senator Pirsch. Senator Pahls. [LB1097]

SENATOR PAHLS: Thank you, Mr. President, members of the body. And I just want to

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go off a little bit on what Senator Pirsch said that we're taking their money. And I understand that because most property tax people think that we are taking their money, up to over \$2.5 billion a year. On income taxes, we take over \$2 billion from individuals. On sales taxes, we take over \$2 billion. So we do take. What I'm seeking for is clarification. And for those groups out there who think they deserve an exemption, let's make...let's clean it up. I do see the Department of Revenue making that effort. Again, I am speaking to the people out there who are watching this. If you think you deserve a tax exemption, take a look at the number that are out there. We have around \$3 billion now. Take a look at those and see if you or your organization would not qualify for an exemption. We need to be fair about this. Well, I find out, what I find interesting, some people say, well, I want mine. Well, I don't know about this group over here. I'm seen being fair. That is why individuals who have asked me to carry bills that would take away an exemption, I have not. That's never been my idea. My idea is to take a look at what we have and check on those. But just to give you an idea, this year, of the 13 bills in front of the Revenue Committee, if they all went out, which we know they will not, but if they all would go out they would cost \$23 million this year, the next year \$25 million, the next year \$26 million. So in three years, it would cost \$74 million. That's just the bills this year. Now that happens year after year after year. So what you have done, that group of tax exemptions just keeps on moving. Now it is hard to argue against this group or this group of organizations that are saying, hey, we deserve these tax exemptions. Not arguing against that. But there has to be a reality check someday. I came within a millimeter of standing up the other day when Senator Flood says, hey, don't, you guys, just don't sit there and vote against the idea that he was proposing; get up and say something; come up with a plan. Well, to me, we do have a plan. Take a look at those tax exemption. That \$10 million or that shortfall that we're going to have this year, when we make tax cuts and say, well, we can't do that, this, this, and this, is because we have exempted so many things in the past. That's the reason why we need to take a look at these exemptions. That \$10 million pales, the Governor's desires for a significant tax cut pales to what we've already exempted. Even over the...I hate to imagine...I haven't figured that up, it wouldn't take that long, over the eight years that I've been down here, how many dollars, how many ideas have been tax exempt. And I have voted for some of those. So think about that. Tax exemption, tax...(microphone malfunction). It all...okay, thank you, it all seems to be in the mix. So, Senator Flood, next time you ask for an example, maybe we ought to take a look at the tax exemptions. I know this year would be a difficult time. But in the future the next Speaker and the next Legislature, they could at least take a look at the potential, the possibility. Not bad.
[LB1097]

PRESIDENT SHEEHY: One minute. [LB1097]

SENATOR PAHLS: Thank you. Like I say, \$3 million setting out there and growing. Thank you. [LB1097]

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PRESIDENT SHEEHY: Thank you, Senator Pahls. (Visitors introduced.) Returning to floor discussion on LB1097. Seeing no requests to speak, Senator Pirsch, you're recognized to close. [LB1097]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I want to start by saying I appreciate Senator Pahls's comments. He says we want to be fair about this. I think he's talking about the overall tax policy of the state of Nebraska, and he's absolutely right. I do agree with Senator Pahls. We need to have more of a consistency and a uniformity and concern about that. And Senator Pahls has been a great leader in this area in terms of overarching tax policy. And quite frankly I'm going to miss his leadership. He has really taken it on himself to be the conscience of this legislative body in reminding us time after time as we address bills that have implications to our fiscal note, so to speak, that we need to be mindful at all times of what we're doing and how we're affecting overall tax policy. And that's right. And there are some exemptions that are very clearly suspect and they should be examined by this body and should be continually reexamined by the body as time goes on. I think that the concept embedded in LB1097 passes muster with that thought because I don't believe that it's a close call. There are shades...there's black and there's white and there are shades of gray, and I think we want to devote our attention to those shades of gray. And I think that clearly when you look at the list that has long time been in statute of what types of activities the state has intended to exempt, because it's consistent with state policy what they're trying to encourage, this clearly fits into that jigsaw puzzle. And so I think it is the very great need, and I don't want to say minor need or even moderate need, but I think the great need that this state has for an adequate delivery system for mental health services, as well as the fact that this, through the existence of these clinics, we can provide those mental health services in the most cost-effective way possible for the state. I think that that really demands that we do, notwithstanding the fiscal note, address the mental health needs by advancing LB1097. So I do appreciate your attention and your time and I would ask for the advancement of LB1097. Thank you. [LB1097]

PRESIDENT SHEEHY: Thank you, Senator Pirsch. You have heard the closing. The question before the body is on the advancement of LB1097. All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB1097]

ASSISTANT CLERK: 32 ayes, 0 nays on the advancement of the bill, Mr. President. [LB1097]

PRESIDENT SHEEHY: LB1097 advances. (Visitors introduced.) Mr. Clerk, we will now proceed to LB867. [LB1097 LB867]

ASSISTANT CLERK: LB867 was introduced by Senator Karpisek. (Read title.) The bill was read for the first time January 6, referred to the Retirement System Committee,

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placed on General File with no committee amendments. [LB867]

PRESIDENT SHEEHY: Senator Karpisek, you're recognized to open on LB867. [LB867]

SENATOR KARPISEK: Thank you, Mr. President, members of the Legislature. I introduced LB867 at the request of the Lancaster County Board. The board operates a defined contribution retirement system for Lancaster County under Section 23-1118 of Nebraska statute. Under current statute, Lancaster County is required to provide a 150 percent employer match of the employee retirement contribution rate. The county is authorized to set the employee contribution rate. However, the statute limits the combined employee and employer contribution rates to no more than 13 percent of the employee's salary. Currently, Lancaster County employees contribute 5.2 percent and the employer contributes 7.8 percent. LB867 would allow the employer to match...excuse me, the employer's match to be reduced to no less than 100 percent of the employee contribution rate for new employees hired after July 1, 2012. The 150 percent match would still remain in place for all current Lancaster County employees. The county board for Lancaster County has two concerns with the county's mandated 150 percent match. First, the match is significantly out of line with the private sector. According to Kerry Eagan, the chief administrative officer for the Lancaster County Board of Commissioners, the board has received numerous complaints that this match is unfair to similarly situated taxpayers working for private employers. Secondly, a reduction in the match is necessary to help Lancaster County control personnel costs and stay within the budget lids. Lancaster County personnel services are 85 percent of its annual budget. In the last several years, Lancaster County has lost \$3 million in combined state aid and prisoner reimbursement. The board has calculated that a reduction to 100 percent match for new employees is estimated to annually save about \$35,000 to \$40,000, depending on the number of new hires. All other counties except Douglas County are covered under the County Employees Retirement Act which currently provides a cash balance plan for all new employees. Employee and employer contribution rates are estimated...sorry, established in statute under the act. The employee contribution rate is 4.5 percent and is matched by the county at 150 percent, which is 6.75 percent. Douglas County has a defined benefit plan for its county employees. Currently, the Douglas County employee contribution rate is 8.5 percent, which is matched by the county at 100 percent. Lancaster County had asked for this raise a number of years ago at 150 percent to try to match the university and the state of Nebraska retirement systems so they could get employees to come there at least on an equal footing. They have found in the recent budget cuts that this 150 percent is really costing them a lot of money. It is much more than the private sector does, and for that reason they would like to go...to have the ability to go to 100 percent for only new hires. I'd be glad to answer any questions if there are. Thank you, Mr. President. [LB867]

PRESIDENT SHEEHY: Thank you, Senator Karpisek. You've heard the opening to

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LB867. Members requesting to speak are Senator Nordquist, followed by Senator Howard and Senator Carlson. Senator Nordquist. [LB867]

SENATOR NORDQUIST: Thank you, Mr. President and members. Senator Karpisek did a fine job opening on the bill. I just want to note that it was unanimous out of committee. It's an issue that we left for the county to have a little more local control on the setting of their match rate. As Senator Karpisek said, currently the employee is at 5.2 percent, the employer at 7.8 percent. Again, this would only apply to new employees and it would allow the county to...and the employees to negotiate for somewhere above 100 percent match or at or above 100 percent match. So I just wanted to reiterate those key points and note that it was unanimous out of the Retirement System Committee. Thank you. [LB867]

PRESIDENT SHEEHY: Thank you, Senator Nordquist. (Visitors introduced.) Continuing with floor discussion on LB867, we have Senator Howard, followed by Senator Carlson. Senator Howard. [LB867]

SENATOR HOWARD: Thank you, Mr. President and members of the body. If Senator Karpisek would yield to a few questions. [LB867]

PRESIDENT SHEEHY: Senator Karpisek, would you yield to Senator Howard? [LB867]

SENATOR KARPISEK: Yes, I will. [LB867]

SENATOR HOWARD: Thank you. I see here that you had one individual come in, in opposition representing the AFSCME union. Can you share with us some of her concerns about this? [LB867]

SENATOR KARPISEK: Sure. I think that her main concern, of course, is that the union would like to see this stay at 150 percent for everyone. And I guess my thought is that this is local control and they can negotiate, of course, during budget time anyway. [LB867]

SENATOR HOWARD: Well, I think more than local control it's probably dollars and cents, however we want to define that. Do you anticipate in the future that the county is going to come back and ask to reduce the contribution for the current employees to match this rate? [LB867]

SENATOR KARPISEK: I don't see that. There hasn't been any talk about that, Senator. I think that that would be a huge hurdle to cross. I certainly wouldn't carry that bill nor support it if they were. [LB867]

SENATOR HOWARD: Well, if this bill passes, then obviously there's going to be two

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different plans here for the retirement of these individuals, one for the current employees and one for those that are hired after July 1. Do you see any difficulty in that, in managing that sort of arrangement? [LB867]

SENATOR KARPISEK: I don't think so, Senator. I think that with computers, you would just put that in for their wage scale and it would automatically adjust. [LB867]

SENATOR HOWARD: Well, thank you, Senator Karpisek, for the... [LB867]

SENATOR KARPISEK: Thank you. [LB867]

SENATOR HOWARD: ...for sharing the information. I can clearly see this as a plan to benefit Lancaster County at a time when expenses are tight and employees are more available. I question whether this is really operating in good faith in terms of bargaining with the union. It really puts the union representative at a disadvantage, and I would have concerns that Lancaster will try to come back at the next bargaining session and to renegotiate the current contribution for employees who are already in their employ. I have real questions about this. The reduction of contributions of the retirement is going to affect these people certainly when they reach the point where they're ready to leave this employment, and few people have the savings to be able to make up the difference in this amount. Thank you, Mr. President. [LB867]

PRESIDENT SHEEHY: Thank you, Senator Howard. Senator Carlson. [LB867]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. I would like to address some questions to Senator Karpisek if he would yield. [LB867]

PRESIDENT SHEEHY: Senator Karpisek, would you yield to Senator Carlson? [LB867]

SENATOR KARPISEK: Yes, I will. [LB867]

SENATOR CARLSON: Senator Karpisek, 150 percent match is pretty unusual, wouldn't you agree? [LB867]

SENATOR KARPISEK: Yes, I would. [LB867]

SENATOR CARLSON: And I don't know how long this has been in effect and I don't even know how it got to be what it is, but you made the statement that it's out of line with private industry, and I think it really is. In fact, I know very few private retirement plans where the match is even 100 percent. Are you aware of many? [LB867]

SENATOR KARPISEK: Not in the private sector, no, I'm not, Senator. Unfortunately, I don't have any, so I don't know. [LB867]

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SENATOR CARLSON: Well, in my 30 years working in insurance and financial advising, I found a lot of time in the private sector the formula would be a 50 percent match of what the employee put aside, and I had plans in force that there was a 25 percent match. I've never had one at 100. So my question is, this only applies to new employees, doesn't it, in Lancaster County? [LB867]

SENATOR KARPISEK: Yes, it does, only new employees. [LB867]

SENATOR CARLSON: And those that are current employees will continue to get the 150 percent match. [LB867]

SENATOR KARPISEK: That is correct. You can't reduce the rates for current employees, by the constitution. [LB867]

SENATOR CARLSON: Was there any discussion about putting that across the board to all employees of Lancaster County, not just new employees? [LB867]

SENATOR KARPISEK: There was not and, again, legal counsel has advised me that you could not do that. [LB867]

SENATOR CARLSON: All right. That sheds a different light on it. But I think in terms of discussion and fairness and what the state can afford and what the counties can afford, whoever worked that 150 percent match was a magician because nowhere would that be even probable today or even appropriate. But thank you for answering those questions, Senator Karpisek. Thank you. [LB867]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Seeing no additional requests to speak, Senator Karpisek, you're recognized to close to LB867. [LB867]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. And I want to thank Senator Howard and Senator Carlson for bringing up the part about current employees. And again, as I said, legal counsel has advised me that once you are locked into one rate you cannot be lowered down, by constitution, will not let you do that. This plan went in ten years ago by Lancaster County. They came to the Legislature and asked to be raised to the 150 percent with the argument saying that they needed that to be able to compete for employees with the university and with the state. And again, now they have realized, with (laugh) budget cuts and things, that it is a hard hurdle to cross. And I think Senator Carlson hit it right on the head that there are not private retirement plans that would pay or give 150 percent. I agree with Senator Howard that it is hard to go down. But again we're looking at everyone in the private sector isn't getting 150 percent. That's a nice bonus if you can get it I guess. But I think we've had a lot of talk in Retirement Committee about defined benefit plans and all sorts

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of other plans and trying to do away with them because of the cost. I would like to look at some other options, ways to keep what we have, have good plans, very good plans for state employees, teachers, State Patrol, judges and all of those people without doing away with the defined benefit. So this is one way that I think that we can help the county, Lancaster County, out. The other counties also have the 150 percent, but it is a lower rate that the employee puts in, so it's a lower rate altogether. I'd appreciate your green vote for local control for Lancaster County on LB867. Thank you, Mr. President. [LB867]

PRESIDENT SHEEHY: Thank you, Senator Karpisek. You have heard the closing. The question before the body is on the advancement of LB867. All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB867]

CLERK: 37 ayes, 0 nays, Mr. President, on the advancement of LB867. [LB867]

PRESIDENT SHEEHY: LB867 advances. We will now proceed to LB858. [LB867 LB858]

CLERK: LB858 by Senator Avery. (Read title.) The bill was introduced on January 6 of this year, referred to the Government, Military and Veterans Affairs Committee, advanced to General File. There are committee amendments, Mr. President. (AM2117, Legislative Journal page 666.) [LB858]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Avery, you're recognized to open on LB858. [LB858]

SENATOR AVERY: Thank you, Mr. President. This bill, LB858, is the result of the Health and Human Services Committee study of the privatization of child welfare by the Department of Health and Human Services, otherwise known as the LR37 interim study. As part of the LR37 interim study process, both the Auditor of Public Accounts and the Legislature's Performance Audit Committee issued a report on the process of privatizing services to children in the welfare system. One of the recommendations from the Performance Audit Committee was to require a state agency to work with Administrative Services in contracting for services over \$25 million to ensure adequate accountability and sound contracting practices. LB858 addresses that recommendation by placing additional requirements on state agencies contracting for services over \$25 million. By the way, this amount is changed in the committee amendment that follows. With this bill, an agency proposing to contract for services over \$25 million will submit to the Materiel Division of the Department of Administrative Services a copy of the proposed contract and a completed proof-of-need analysis. This proof-of-need analysis will include a number of elements: number one, the reason for purchasing the service instead of using state employees; two, a review of the long-term cost savings; three, an explanation of how the state agency will have adequate control mechanisms to ensure

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the services are provided pursuant to the terms of the contract; four, identification of the specific state agency employees who will monitor the contract for services for performance; five, identification and description of whether the service requested is temporary or occasional; six, an assessment of the feasibility of alternatives within the state agency to contract for performance of the services; seven, a justification for entering into the contract if the contract will not result in a cost benefit to the state; eight, any federal requirements that the service be provided by a person other than the state agency; nine, demonstration by the state agency that it has taken formal and positive steps to consider alternatives to the contract, such as reorganization, reevaluation of services, and reevaluation of performance; and finally, a description of any relevant legal issues including barriers to contracting for services or requirements that the state agency contract for the service. The Materiel Division will, this is of DAS, will certify the proof-of-need analysis by determining whether the analysis contains the information required and will report that determination to the state agency within 30 days. If the division certifies the analysis, the agency may enter into the proposed contract. If the division does not certify the analysis, it will inform the state agency of the additional information required. The state agency will file the proposed contract, proof of analysis...a proof-of-need analysis, proof of certification with the...and all of this will be filed with the Legislative Fiscal Office. This is important because the Legislature will have ready access to the information on all contracts over \$25 million. Also included in the bill is a change to the child welfare exception for service contracts. Currently in law, service contracts with direct providers of medical, behavioral or developmental health services, childcare or child welfare services to an individual are exempted from most of the service contract provisions, such as competitive bidding or completing a preprocess. LB858 allows an exemption for service contracts with direct providers of child welfare services to an individual if the contract is under \$25 million. If it is in excess of \$25 million, again that is changed in the amendment, the service contract will not be exempted from competitive bidding provisions and other provisions of the personal services contract statutes. This provision is important because the Department of Health and Human Services relied upon the child welfare exception in order to enter into the contracts to privatize child welfare. Both the Legislative Performance Audit Committee as well as the Auditor of Public Accounts expressed concerns about the way the Department of Health and Services entered into these contracts. This bill keeps the child welfare exemption in place but requires that if a contract is over \$25 million the agency will need to complete a proof-of-need analysis to demonstrate why the contract is necessary, as well as competitively bid the contract. I will end there, Mr. President, and then I will proceed in a moment to the amendment, which does change some of the provisions I just described. Thank you. [LB858 LR37]

PRESIDENT SHEEHY: Thank you, Senator Avery. Speaker Flood, you are recognized for an announcement. [LB858]

SPEAKER FLOOD: Thank you, Mr. President. Good morning, members. I wanted to

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take this opportunity to outline for you what I felt...what I feel the rest of our week will look like from a scheduling perspective and to kind of talk to you about where we're going next week as well. Today, obviously, we're set to work late. At 1:30 we're going to take the midbiennial budget up on Select File. I'd like to leave today at a minimum with that...with those bills moving to Final Reading. I do anticipate a late night this evening. Tomorrow we're going to continue with some General File bills. There is the potential for the tax plan, LB970, to be up on the floor; that remains to be seen. I also anticipate working late. On Wednesday, more General File. I anticipate wrapping up Senator Lautenbaugh's bill as it relates to horse racing on Wednesday. On Thursday we're going to take up consent calendar. As you'll recall, we're starting at 8:00 in the morning. In fact, on Wednesday's agenda you'll see all the bills for consent calendar, as is required by the rule. And then the only thing we're going to take up on Thursday, starting at 8:00 a.m., is consent calendar. I also want to let you know that there's an emergency drill that will occur Thursday at 11:45. I'll get you more information on that. I anticipate a short recess, comply with the drill, and then come back and continue on with consent calendar. As you might imagine, we're building up a lot of bills on Select File. Next week we're going to take some time with that. We're also going to take up the Final Reading on the budget, as required by rule. And I also anticipate next week taking up Senator Janssen's LB239, finishing that on General File as it relates to voter ID. I hope that gives you kind of a picture of where we're going at the front of the week. It's all subject to change. And as I know more, I'll let you know. Thank you.

PRESIDENT SHEEHY: Thank you, Speaker Flood. You have heard the opening to LB858. As was noted, there is a Government, Military and Veterans Affairs Committee amendment, AM2117. Senator Avery, you're recognized to open. [LB858]

SENATOR AVERY: Thank you, Mr. President. The committee amendment does make some changes to the original bill. First, the amendment provides that state agencies will not enter into a proposed contract for services in excess of \$15 million until the state agency has submitted to the Materiel Division of DAS a copy of the contract and a proof-of-need analysis. Note this is different from the original bill. The green copy sets the number at \$25 million; the amendment moves that down to \$15 million. The committee believed the \$25 million figure was too high and wanted additional service contracts to complete the proof-of-need analysis. I would point out that we had a couple of other bills before the committee that recommended that the number be lower as well. According to the information that the committee received from the Department of Administrative Services, there are currently 59 service contracts totalling \$15 million or more. Currently, there are 31 contracts in the state totalling \$25 million or more. The Government Committee wanted agencies entering into large service contracts to do the additional steps of the proof-of-need analysis to ensure the contracting process is deliberate and thoughtful. Although the Legislative Performance Audit Committee's recommendation was to set the number at \$25 million or above, that committee was consulted and they are comfortable with lowering the threshold to \$15 million to include

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additional service contracts. The amendment also changes the exemption for service contracts with direct providers of medical, behavioral or developmental health services, childcare or child welfare services. These child welfare contracts will be exempted from certain service contract provisions if the contract is \$15 million or less. This change is consistent with the earlier change in the amendment that all contracts over \$15 million go through the proof-of-need analysis. The committee amendment also adds language providing that the purpose of these service contract provisions is to establish an open and fair process for selection of contractual services using performance-based contracting methods to the maximum extent practicable. This language was part of another service contract bill introduced before the committee by Senator Krist and heard by the Government Committee, LB1159. We included some of the language from his bill. We also had a bill from Senator Mello and we incorporate at least the spirit of some of his provisions into LB858. Finally, the amendment clarifies the duties of the Materiel Division of DAS when certifying the proof-of-need analysis. We consulted closely with the Department of Administrative Services. And we came to an agreement that the division will certify receipt of a proof-of-need analysis and report the receipt of the analysis to the state agency no more than 30 days after receiving it. Certification of the proof-of-need analysis means all the information required for the proof-of-need analysis has been provided to the division by the state agency. Again, we worked very closely with DAS in preparing the amendment so that as it is now written they do not oppose it. They did appear on the green copy at the hearing and testified in a neutral capacity. The Government Committee advanced the bill as amended on and 8 to 0 vote. I urge your adoption of this amendment and the underlying bill. Thank you, Mr. President. [LB858 LB1159]

PRESIDENT SHEEHY: Thank you, Senator Avery. You have heard the opening of the Government, Military and Veterans Affairs AM2117 to LB858. Members requesting to speak: Senator Harms, followed by Senator Krist, Senator Howard, and Senator Louden. Senator Harms. [LB858]

SENATOR HARMS: Thank you, Mr. President, colleagues. I rise in support of AM2117 and the underlying bill, LB858, on behalf of the Performance Audit Committee. The need for LB858 arose from Performance Audit Committee's section...recent audit of the child welfare system as part of the LR37 study. In that audit we found that the Division of Children and Family Services did not conduct any type of cost-benefit analysis prior to entering into the 2009 lead agency contracts, which conflicts with contracting standards; we believe was a critical error. The Performance Audit Committee felt that state government should have a protection in place to keep a state agency from being able to enter into a substantial personal services contract without conducting or obtaining a detailed analysis of the potential financial implications. To that end, we recommended that there be legislation drafted that would require a written cost-benefit or similar analysis or an opinion by a fiscal expert by the potential financial implication of personal services contracts at the value, at that time, of \$25 million. But we do support

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the change of the committee for \$15 million. LB858 does this and more by requiring a proof-of-need analysis which would include a review of long-term, actual cost savings of the contract and an explanation of the analysis used to determine such savings. The proof-of-need analysis would also require an explanation of the process by which the state agencies will require adequate control mechanism to ensure that the services are provided pursuant to the terms of the contract, even including a description of the method by which the control mechanisms will ensure the quality of services provided by the contract. The Performance Audit Committee supports the additional protection and additional accountability that LB858 would require of all state agencies wishing to contract with this great state, along with this amendment, AM2117. I would urge you to support both. Thank you, Mr. President. [LB858 LR37]

PRESIDENT SHEEHY: Thank you, Senator Harms. Senator Krist. [LB858]

SENATOR KRIST: Thank you, Mr. President. And again, good morning, Nebraska and colleagues. I started out the session with my diatribe and I would continue. There is nothing more disastrous to a contract than accountability or lack of accountability, sorry, lack of accountability, which we have seen in these contracts beginning in 2009. I am a member of the Performance Audit Committee and a member of the Health and Human Services Committee. And together those experiences over the interim period and looking in depth into the contracts and their failings, to be blunt, led me to put in a bill in front of the Government Affairs Committee. And as Senator Avery had said, it...part of my language is included in AM2117 and LB858. And I appreciate the committee's diligent concerns and extracting a very important part of my bill to include which had to do directly with accountability, cost analysis, knowing that you have an idea of what this is going to cost, what services are going to be provided, and at the end of the day some kind of accountability for those services and for the money. It is, after all, our responsibility as the Legislature to appropriate and then to apply oversight. In the appropriations phase we did fine writing the check. In the accountability side of it we recognized that the department, for whatever reason, was not exerting the right oversight and therefore there was money lost and additional money thrown at issues, my opinion, but I think it holds true when you look at the Auditor's report in conjunction with the Performance Audit Committee report and with LR37. It is extremely important that if we the government, not we the Legislature, but if we the state of Nebraska enter into a contract and if we spend the taxpayers' dollars, we need to be accountable for that at the end of the day, every dime, every dime. I urge your support for AM2117 and the underlying LB858. Thank you. [LB858 LR37]

PRESIDENT SHEEHY: Thank you, Senator Krist. Senator Howard. [LB858]

SENATOR HOWARD: Thank you, Mr. President, members of the body. And thank you, Senator Avery and Senator Krist and Senator Mello especially. I have been concerned about the costly child welfare expenses and the obvious overruns from even before the

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time the contract was signed. I remember the statement that this same amount of money will be used in contracting to improve services as we used to provide services internally. I appreciate that this bill looks at that issue and holds accountable the expenses that will be incurred or could be projected to be incurred by contracting out rather than using state employees to deliver services. If Senator Avery would yield to a question. [LB858]

PRESIDENT SHEEHY: Senator Avery, would you yield to Senator Howard? [LB858]

SENATOR AVERY: I will. [LB858]

SENATOR HOWARD: Thank you, Senator Avery. As you will remember, this contracting out, the original contract, the initial contract was signed in November of 2009 when we were not in session. We didn't have...this legislative body had no input into that. Do you see this bill as addressing the issue of contracts, major changes being proposed, being made, being signed while we are not available and in session? [LB858]

SENATOR AVERY: Well, it certainly does tighten up the process, make it more open and more accountable. I did a little research on service contracts, or at least my staff did, and we came to the conclusion that the legislation dating back to 2003 over time became more broadly interpreted. Probably in 2003 the intent was that there would be a lot more openness and a lot more perhaps accountability. But over time that definition and interpretation of, I believe the bill was, LB626 got expanded so that by the time we got to where we are and where we were in November of 2009, the Department of Health and Human Services believed that they were operating within the law in the way they issued those contracts. [LB858]

SENATOR HOWARD: Do you, Senator Avery, do you have any thoughts yourself about why this was done with such urgency before we returned in session, that would have been in January of 2010, for this body to have a look at those contracts? [LB858]

SENATOR AVERY: I believe there was conviction and genuine belief in the efficacy of privatization. I don't believe that anybody was prepared for the outcome that we've witnessed since we actually started the privatization process. [LB858]

SENATOR HOWARD: Thank you, Senator Avery. [LB858]

SENATOR AVERY: I'm sorry. [LB858]

SENATOR HOWARD: I sincerely hope that this bill will allow any major contracts, any contracts that involve the amount of money that this privatization effort has spent of taxpayer dollars to rein in the parameters on these contracts and to prove beyond a doubt that this is going to be cost-effective, if not saving funds, while at the same time

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delivering equality of services. And in this case, in this privatization effort it failed on both those counts. I appreciate you bringing this bill. And I'm certainly supportive of this effort. I think it's going to be ongoing. I don't think this is going to be the end. I think it's going to be a work in progress to address the contracting issue. [LB858]

PRESIDENT SHEEHY: Thank you, Senator Howard. Senator Louden. [LB858]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. I have some questions with this bill. Would Senator Avery yield for questions, please? [LB858]

PRESIDENT SHEEHY: Senator Avery, would you yield to Senator Louden? [LB858]

SENATOR AVERY: I will. [LB858]

SENATOR LOUDEN: Yes, Senator Avery. As I look at the bill I see one of the amendments lowers the amount from \$25 million to \$15 million. Is that correct? [LB858]

SENATOR AVERY: That is correct. [LB858]

SENATOR LOUDEN: Now is this...that's what AM2117 does. And now was this bill brought forwards primarily for the Health and Human Services contract bill, some of the problems we've been having with foster care and that sort of thing? Is that what this... [LB858]

SENATOR AVERY: This...yes, this grew out of the LR37 interim study and the Performance Audit Committee's recommendations, plus the recommendations of the Auditor of Public Accounts. [LB858 LR37]

SENATOR LOUDEN: Yeah. Now on page 13 of that bill, yeah the bill, it says, state agencies shall not enter into a proposed contract for services in excess of \$25 million, which I presume that will be changed to \$15 million and so on. Now is that services? Is that contract work? How does this affect the Department of Roads? [LB858]

SENATOR AVERY: Well, the Department of Roads would come...would be covered by this. All agencies of state government would be covered if they have contracts that are in excess of \$15 million, if we adopt the amendment. [LB858]

SENATOR LOUDEN: Okay. Then if the Department of Roads had... [LB858]

SENATOR AVERY: Oh, I'm sorry, I'm sorry. The Department of Roads is exempted. [LB858]

SENATOR LOUDEN: Okay, does that say someplace in the bill where they're exempt?

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[LB858]

SENATOR AVERY: I think they're covered in other parts of statute. [LB858]

SENATOR LOUDEN: Okay, but not necessarily the bill then, but you seem...you say you think in other statutes they would be exempt? [LB858]

SENATOR AVERY: That is correct. I do note though that they have...no, I'm thinking of another bill. I thought they had a fiscal note on this, but they do not. [LB858]

SENATOR LOUDEN: Anyway, that was my concern in here when it had a state agency, and I thought it went on to say someplace in the bill "all state agencies" that would do this. And so I am concerned about the Department of Roads as many times has contracts over that threshold and whether or not there should be some clarification in this bill before we get on through Select File or someplace in there in order to find someplace along the line and be clarified that this doesn't affect the Department of Roads. [LB858]

SENATOR AVERY: It does not. If you go to page 12 of the green copy, on lines 5 and 6, it indicates that the Department of Roads contracts for all road and bridge projects would not be covered. [LB858]

SENATOR LOUDEN: Okay, thank you, Senator Avery. With that, that clarified up my concerns with it. As I think it's already been stated that we need some oversight in some of these contracts, so I'll probably support the bill. Thank you, Mr. President. [LB858]

PRESIDENT SHEEHY: Thank you, Senator Louden. Senator Campbell. [LB858]

SENATOR CAMPBELL: Thank you, Mr. President. And again, good morning, colleagues. I will be very brief. I want to thank certainly Senator Avery, Senator Krist and Senator Harms for their work on this. If you took time to look at the LR37 report in its total, over and over and over again it refers to the contracts. And this is a good step. But an important step is also the work that was done by the Performance Audit Committee and the financial oversight that will be put into place. So I wanted to thank those senators and say this certainly was a large part of LR37. Thank you, Mr. President. [LB858 LR37]

PRESIDENT SHEEHY: Thank you, Senator Campbell. Seeing no additional requests to speak, Senator Avery, you're recognized to close on the Government, Military and Veterans Affairs amendment, AM2117. [LB858]

SENATOR AVERY: Thank you, Mr. President. This is an important first step toward achieving a bit more openness and fairness in the selection of contract services. It is not

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a perfect bill. Probably we will revisit this at some point down the road. But I do think that it's necessary that we at least take this first step. And we worked very hard with the Department of Administrative Services to make sure that what we were doing was acceptable to them. I suspect that once the amendment is adopted, if it is adopted, that the fiscal note will change substantially if not disappear altogether. Thank you, Mr. President. [LB858]

PRESIDENT SHEEHY: Thank you, Senator Avery. You have heard the closing. The question before the body is on the adoption of the Government, Military and Veterans Affairs amendment, AM2117, to LB858. All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB858]

CLERK: 37 ayes, 0 nays on adoption of committee amendments. [LB858]

PRESIDENT SHEEHY: AM2117 is adopted. We will now return to floor discussion on LB858. Seeing no requests to speak, Senator Avery, you're recognized to close. Senator Avery waives closing. The question before the body is on the advancement of LB858. All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB858]

CLERK: 35 ayes, 0 nays, Mr. President, on the advancement of LB858. [LB858]

PRESIDENT SHEEHY: LB858 advances. Mr. Clerk, items for the record? [LB858]

CLERK: Mr. President, Senator Cornett would like to add her name to LB745. (Legislative Journal page 992.) [LB745]

And Senator Fischer would move to recess the body until 1:30 p.m.

PRESIDENT SHEEHY: You have heard the motion to recess until 1:30 p.m. All those in favor say aye. Opposed, nay. We stand at recess.

RECESS

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: Good afternoon, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber. The afternoon session is about to reconvene. Senators, please return to the Chamber and record your presence. Mr. Clerk, please record.

CLERK: I have a quorum present, Mr. President.

SENATOR LANGEMEIER: Thank you. Mr. Clerk, do you have any items for the record?

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CLERK: I do, Mr. President. Enrollment and Review reports LB541A to Select File; Senator Wallman, an amendment to LB1090 to be printed; and a hearing notice from Health and Human Services Committee. That's all that I have, Mr. President. (Legislative Journal pages 993-994.) [LB541A LB1090]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. We will now proceed to the first item on this afternoon's agenda which is time specific, Select File budget bills, LB968. Mr. Clerk. [LB968]

CLERK: LB968, Mr. President, discussed last week by the body. At the time, Enrollment and Review amendments were adopted. When the Legislature left the issue, Senator Flood had pending AM2504 as an amendment to the bill. (Legislative Journal page 969.) [LB968]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Flood, would you like to give us a brief opening on AM2504? [LB968]

SPEAKER FLOOD: Thank you very much, Mr. President. Members, as I explained last Friday, this amendment was filed by me to give the Legislature an opportunity to come to terms with potentially a solution between the Revenue Committee, the Appropriations Committee, and to some extent folks on the Education Committee. I've had a visit with a number of you this morning and more so last Friday. What I'd ask here, this AM2504 takes \$2 million out of Medicaid this year and next year, for a total of \$4 million. In my conversation with the Fiscal Office, they thought that was obviously a political decision for the Legislature but that it was an acceptable reduction in spending, and that's not the Appropriations Committee talking. The second amendment as part of this division, AM2503, relates to behavioral health aid, and what I'm asking you to do there is vote no on that today. I did hear from a number of you that expressed concerns about that money reduction, drawing down what the regions can deal with in their service to folks across the state. Unfortunately, I can't withdraw the next amendment because it is part of a divided question, per our rules, so I'll lead the fight and hopefully we can all vote no on that, not this one but the next one. And then the third change captures money that would have gone from the General Fund to the EPIC Fund for ethanol that is no longer needed and takes advantage of some community corrections funds that are not needed. So again, on AM2504 I would ask for your support, on the next amendment I would ask you to vote no, on the third amendment I would ask you for your support. And the other thing I want to say is that, you know, whatever happens on the tax plan is what happens on the tax plan, but I do think we're making some changes here that at least allow us to have that conversation and then begin that debate. Thank you. [LB968]

SENATOR LANGEMEIER: Thank you, Senator Flood. You've heard the opening on AM2504 offered to LB968. The floor is now open for discussion. Senator Flood, your

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light is on. You're recognized. Waives his opportunity. Senator Burke Harr, you're recognized. [LB968]

SENATOR HARR: Thank you, Mr. President. And I turned on my light before I knew that there was a request to withdraw AM2503, which is nice. I appreciate that. I think it's a good idea to eliminate AM2503. I don't know if this is part of a bigger deal or what's going on right now. I'll be excited when I get off the mike to kind of talk to some of my fellow members to find out if a deal has been struck. I just caution, remember we are Nebraskans first and we have fiscal values that the rest of the country may not have, and it's those values that have prevented us from getting into the financial woes that other states have. We have been, through this recession, able to not raise taxes where others have not. For that we should be congratulated. And part of the reason we were able to do that is because we didn't play politics with other people's money. Remember, we are trustees to the citizens of Nebraska to take care of the finances. We are still facing a large, financial black hole--\$400 million. Now you can argue maybe \$400 million is too high; might agree with you. But we got to stop digging, ladies and gentlemen, and we have to make sure we can afford to do what we're trying to do here today. We're taking \$2 million away from Medicaid. Now I've heard a lot of people cry and moan about "ObamneyCare," "ObamneyCare" this, "ObamneyCare" that, it's going to be a suck on the state. Well, if it is, it's going to be...the largest suck is going to come out of Medicaid. Are we going to have the money? I don't want to hear down the road that, oh, we had to raise taxes because there wasn't enough money in Medicaid, when two years before we raided Medicaid. Again, think about the long-term consequences of your actions. We have to be very prudent. We are not out of this recession yet. I would love to say the recession is over and we can go forward, but we don't know, we just don't know if it's over. We're looking at high gas prices. We're looking at unemployment that still hasn't stabilized. Is it time to quit holding our breath, release, and start spending? I don't know. I think it's still time to hold the line, make sure we have enough money to do what we want to do or what we're obligated to do before we go around and give money back to...in small amounts to the citizens. It's their money but I'm not sure if we have the ability at this time, if we have enough in reserve. So I'm going to pay attention to the debate. I hope to gosh darn we do, but at this point I'm not ready to say we are. Thank you. [LB968]

SENATOR LANGEMEIER: Thank you, Senator Harr. Senator Campbell, you're recognized. [LB968]

SENATOR CAMPBELL: Thank you, Mr. President. Good afternoon, colleagues, and I just want to make a quick remark to Senator Flood's comments, and I very, very much appreciate taking behavioral health off the table. There's a number of senators in here who have worked for two years. We're going into our final year here on the LB603 package which came as a result of the safe haven issue. It will be extremely important, it seems to me, looking into the future that we will be able to utilize and need those

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behavioral health dollars, particularly for children's health. As a result, there are many good ideas coming out of LB603 and they're going to need some support and they're going to need dollars. And so I just wanted to express my appreciation for that and also to remind you all that we do have a continuing interest because of LB603. Thank you, Mr. President. [LB968]

SENATOR LANGEMEIER: Thank you, Senator Campbell. Senator Dubas, you're recognized. [LB968]

SENATOR DUBAS: Thank you, Mr. President. Would Senator Heidemann yield to a question, please? [LB968]

SENATOR LANGEMEIER: Senator Heidemann, would you yield? [LB968]

SENATOR HEIDEMANN: Yes. [LB968]

SENATOR DUBAS: Senator Heidemann, I know you spoke to this last week when we began discussing this amendment but could you walk me back through the process that the Appropriations Committee went through when you made the decision on how much you thought should be left in this pot of money? [LB968]

SENATOR HEIDEMANN: I'm doing this a little bit by memory. Why don't I just cut somewhat to the chase because we've accessed a little bit of money, not maybe quite as much as what the Governor first proposed, and then it went back and I think there was another \$14 million pulled out from child welfare reform--I'm doing good so far--and now they're coming back for another \$2 million in this current year and \$2 million in the next year, the thought being that this, because of utilization, isn't coming to where they thought it was going to be, that we could access \$2 million and \$2 million and still be all right at the end. And I would have to think that that's definitely a possibility but there are risks. There are always risks in anything that you do on the top side or on the bottom side. But I'd say at this time there are people that are comfortable with saying that this has a possibility of working. [LB968]

SENATOR DUBAS: So we never really have a good grasp on the utilization part of it. [LB968]

SENATOR HEIDEMANN: You're talking a very huge program that if you look at utilization, it can go up and down. They do their very best to try to figure out where they're going to be. You have to understand, they're building their budget next summer to hand in next September. That's going to affect the next three years and you never know in your out year exactly where you're going to be at with the economy and just other things. It's a tough number to peg down. [LB968]

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SENATOR DUBAS: Right. So if we would go ahead and pass this amendment and it ended up we needed this money, then what option do we have, either as the Appropriations Committee or as the Legislature? [LB968]

SENATOR HEIDEMANN: There's always deficit requests which come in. Even though this is a deficit year, next year, when they're building their biennial budget and I will not be there, if this...there is a shortfall in this, they come in for a deficit request. There's still six months of the fiscal year even when they meet next January to take into account. They have time to come in for a deficit request if they realize there's going to be a shortfall at that time. [LB968]

SENATOR DUBAS: Okay. Well, thank you very much for that information, Senator Heidemann. [LB968]

SENATOR LANGEMEIER: Thank you, Senator Dubas. Senator Wallman, you're recognized. [LB968]

SENATOR WALLMAN: Good afternoon, Mr. President, members of the body. I appreciate Senator Harr and Senator Dubas' statements. You know, the provider rates, education, special ed, we, you know, we pass a lot of stuff off to the counties and cities, so-called tax savings. Tax savings for who? Not the citizens. It just shifted the taxes. And that's what we've been doing. We've been shifting them here and there and everywhere so we can say in this legislative body we cut taxes. Did we cut taxes? We cut responsibility, who pays for what. And we set the guidelines, what they're supposed to teach, special ed, this and this and this, the assessments and all this stuff. We set that in here and then we want to...don't want to pay for it. We don't pay for special ed, not near what it's supposed to be getting, 50 to 60 percent, and then that's paid in arrears so you're carrying this load for a semester or two. So I know what's...everybody is trying to cut taxes to make a tax cut look good for us and everybody, but, folks, great civilizations pay taxes. Nobody likes to pay taxes. But look at our roads. Where are we going to get the money to fix our roads? We don't want to add to a sales tax because it will raise the price. Iowa is going through a nickel increase maybe. I don't know if it will pass or not. But it costs money to fix roads, as Senator Fischer would tell you. So if we take this out of General Fund, the road budget, that's going to draw down and who knows how much, and the first things that will get hit are provider rates. Do you want to go back to your communities, your Mosaics, your Boys Town, Girls Town and tell them, got to cut your rates? Do you want to do that? You care for children in here. Do you want to do that? So let's be careful what we do. We put it up, we voted on it the first time to give special ed some more money. I know it was against Appropriations, and I appreciate what they do. But if we leave our income tax alone maybe the money is there. Thank you, Mr. President. [LB968]

SENATOR LANGEMEIER: Thank you, Senator Wallman. Senator Campbell, you're

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recognized. [LB968]

SENATOR CAMPBELL: Thank you, Mr. President and colleagues. I just got asked about the Medicaid money and I want to concur with Senator Heidemann's comment to you all. The first \$2 million is probably less risky. The \$2 million for the next year is a bit more risky, but we don't know what utilization will be. I want to sort of give you a preview that if you're concerned and looking at Medicaid, one of the important bills that will come before you is LB1063, which deals with medical necessity and how we meet that and what guidelines we set into place for it. That has as much of an impact on how we may eventually serve youth. But I wanted to let you know that at least from my perspective there is a risk that's out there, I agree with Senator Heidemann, but the behavioral health would have been far more critical. Thank you, Mr. President. [LB968 LB1063]

SENATOR LANGEMEIER: Thank you, Senator Campbell. Seeing no other individuals...Senator Krist, you're recognized. [LB968]

SENATOR KRIST: Good afternoon, colleagues. And I just wanted to add very briefly to that. Having watched this process go on, at this point, to be realistic with you, my colleagues, and honest, if we don't transfer the money out of Medicaid, the department may very well transfer it out and put it where they want it or ask us to put it there anyway. That seems to be the trend--move the money where you want to or where you need to. So in terms of accountability, if you add that into your decision process as you make this vote, do it now, you control where the money is going to go and you know where it's going to go; don't do it and the department may very well decide down the road to transfer it to something that they want to transfer it to. Thank you. [LB968]

SENATOR LANGEMEIER: Thank you, Senator Krist. Senator Council, you're recognized. [LB968]

SENATOR COUNCIL: Yes, thank you very much, Mr. President. Good afternoon, colleagues. I rise with concerns with regard to AM2504 and some of my colleagues who have spoken to this issue during the debate today have alluded to it. I mean the issue with Medicaid and this state's obligations with regard to residents who are eligible for Medicaid benefits is affected in large part by how we define medical necessity, and Senator Campbell alluded to it and particularly when we're talking about serving our youth. A lot of the youth who find themselves in our juvenile justice system being provided services through OJS, many of those young people have behavioral mental health problems. Many of those young people need to have psychiatric services or psychiatric-related services and many of those youngsters are Medicaid eligible. But it becomes problematic when the intermediary involved in the process makes determinations that a particular type of treatment that it's clear that the youth needs...I mean I have had instances where the court has ordered a youngster to receive a particular type of behavioral mental health treatment and then that treatment not be

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provided because Magellan says that it doesn't meet the definition of medically necessary. And notwithstanding the fact that the court has ordered the child, the youngster to receive that type of treatment, many times it doesn't occur because Medicaid...until you go back to court, at which point in time the judge will make it clear. If the judge orders that level of treatment and Medicaid doesn't pay for it then it becomes a state responsibility in any event. And so we need to be cognizant of the fact that we may see many more situations where there are going to be challenges to denials of particular treatment for wards of the state of Nebraska, and they're going to be required to be provided those services. And if they're Medicaid eligible, it's going to come out of and be paid for by Medicaid. And I think the risk of lowering the amount of dollars available to the Department of Health and Human Services to meet that potentiality, and I believe eventuality, I think is critical. And I appreciate and respect what Senator Krist has said in this regard. And Senator Heidemann, while he stated correctly that the department can come in and ask for a deficit appropriation, if our reserves are at the deficit levels that we're speaking of them being in the out years where does the deficit appropriation come from? I mean you can't appropriate that which you do not have and either we go to...we either have to take the Cash Reserve down below what the Appropriations Committee considers to be appropriate levels or you have to cut from other areas in order to provide the funds to meet a deficit appropriation. So I think...and while Senator Heidemann was absolutely correct that that is the process, that doesn't mean that that will naturally occur without further angst and without further difficult decisions on where do the funds come from to meet the deficit appropriation. For those reasons, I cannot support AM2504. I think we need to maintain adequate reserves. In the budget for the Department of Health and Human Services, I think that this body has taken the appropriate action to provide the kind of oversight that the Department of Health and Human Services clearly has evidenced that it needs. But to place us in a position where people in this state who need these services may not be able to access them because the funding is not available is not something that I'm willing to accept responsibility for at this time, so I will be voting against AM2504 and I would urge the body to do the same. Thank you. [LB968]

SENATOR LANGEMEIER: Thank you, Senator Council. Senator McGill, you're recognized. [LB968]

SENATOR MCGILL: Thank you, Mr. President, members of the body. While I appreciate the hard work done over the weekend and the elimination of the amendment to take away behavioral health funding, I do have to continue to be opposed to this particular amendment because I do feel there are so many families, especially with children who are either state wards or perhaps should be, who aren't qualifying for Medicaid or whose Medicaid is running out and being kicked out of the system or other kinds of services they need to get well. And as long as that's happening, I just can't justify to myself the elimination of additional...of money that is currently allotted to that. And as Senator Campbell said, we'll be talking about medical necessity a little later in this session, but

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just a few days ago we were talking about special-needs children in our schools. Well, one of the reasons we have so many kids with behavioral needs in our schools is because they're not qualifying, they're not fitting the medical necessity to get them out of the schools and in a placement that can truly help reform their behavior in a place outside of the school where they're not disruptive to other students who don't have those issues. It's something I hope we can address with medical necessity because we are seeing a growing number of young people in our schools, rural and urban, who really do need additional help because their insurance only covers so many counseling sessions. They have insurance but that runs out and then where do they go? They're not qualifying. And so that is a problem we need fixed. We have families with children who are...fall somewhere on the autism spectrum who are having trouble qualifying based on whatever the necessity is. We've been trying to get that fixed. I know Senator Coash had a bill dealing with autism and insurance coverage, but that's a group of youth that desperately need this service and families that need that service. And so until some of these issues are worked out where I feel like our families' needs are truly being met, I just can't justify to myself cutting any Medicaid dollars. We have families out there who need it. We have families or state wards who were sent to places like YRTC or Boys Town or other facilities who their Medicaid runs out, if you will. And so even if their issue hasn't really been resolved, it's, oh, okay, we're going to send you back with your...either your parents or your foster parents and out of this out-of-home placement and back into a home environment, where the problem just persists because they didn't really get the treatment they needed. It didn't last as long as it should. And so we have continuing problems with Medicaid and making sure our young people get the services they need and so again, until those issues are fixed, I can't support this amendment. Thank you, Mr. President. [LB968]

SENATOR LANGEMEIER: Thank you, Senator McGill. Senator Coash, you're recognized. [LB968]

SENATOR COASH: Thank you, Mr. President. Thank you, members. Been working with the Fiscal staff to get some answers to some of my questions and very much appreciate them being available to us. I had a couple of comments that I wanted to make. The first one has to do with the removal of the behavioral health amendment that Speaker Flood spoke about earlier. That one kept me up all weekend thinking about the behavioral health needs and how I was going to explain to the body the ongoing costs with corrections and education when we don't address behavioral health needs, especially for children. And I very much appreciate the work Speaker Flood has done and his decision to pull that piece from consideration. AM2504 I'm continuing to ask questions about. One of the things that I wanted to bring to the body's attention, I think Senator Campbell and Senator Council and Senator McGill have mentioned this, this is what's happening frequently with regard to medical need and kids who find themselves in front of a judge. They find themselves in front of a judge and a judge, who's trained in the law, has to make a decision about what's in best interest of a child who has various

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service needs. That judge is going to make the best decision he or she can in the best interests of the child. Sometimes, and with more frequency in some service areas than others, judges are making decisions about services that a kid needs that Medicaid has decided that they won't pay for. So they will say, you, young man, seem to be appropriate for this level of service. Well, this level of service happens to be a Medicaid service. The Medicaid criteria make you ineligible for that, so I'm signing an order and because that child is a state ward the state now has to pick that cost up. Now they don't pick it up out of the Medicaid budget, as what would be saved under AM...or eliminated or reduced under AM2504. Medicaid won't pay for it, but the state still has to. And what I was trying to get clarified with the Fiscal Office is they'll just have to pull that out of a different pot of money. That's what they've been doing. That's what HHS has been doing with these children for many, many years. They've just had to pay out of pocket for something that Medicaid wouldn't cover. Now there's two sides to this coin. If we start to right the ship, in my mind, of how medical necessity is done, we're going to need this money. If we continue down the path that we're going where we just decide out of the, by the way, shrinking number of options that children and families have for services, the service money that they need does not come out of the fund that is proposed to be reduced here. So we are struggling a little bit, colleagues, and we're asking good questions. I would...I'm going to continue to work with the Fiscal staff and get my questions answered, but I want my colleagues to understand, if we are truly interested, and I know that we all are, in providing quality services to kids, that's going to happen because we have great providers out there. It's the pot of money that we're going to pay for it that is what we're debating here. And some of us are concerned that we may need this pot of money that's proposed to be eliminated. What I'm going to tell you is we're not using it very much anyway because... [LB968]

SENATOR LANGEMEIER: One minute. [LB968]

SENATOR COASH: ...judges are ordering services that don't meet medical necessity and we're just paying that. That's just writing a blank check. We don't get any federal help for that. It's a blank check...not a blank check, a straight check right out from the Children and Family Services fund that they have to do lots of priorities with. And we may be in a good spot with this amendment because we don't need this money for children, but I would encourage you to continue to ask questions as I will. Thank you, Mr. President. [LB968]

SENATOR LANGEMEIER: Thank you, Senator Coash. Senator Wallman, you're recognized. [LB968]

SENATOR WALLMAN: Thank you, Mr. President. Members of the body, just a few facts and figures. Significant disabilities went from 35 percent to 43 percent since 2000, and that costs a lot of money. And special ed, the disabilities consider autism, behavioral disorders, deaf, blind, developmental delay, hearing impairments, mentally handicapped,

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multiple disabilities, health impairments, orthopedic impairments, traumatic brain injury, and visual impairment--special ed, significant cost. So the federal government is supposed to give us some money for this but it pretty well stayed flat and the state, as well, has not went up very much. So...and we are federally mandated, folks, to take care of our special ed students, so that provides a percentage reimbursement of the allowable excess cost the prior year for school-age children. You're talking prior age, so that's a year behind. So state funding is supposed to be reimbursed on excess costs from prior year. So General Fund appropriations for SPED reimbursement is limited to 5 percent of prior fiscal year expenditures but has not reached the 5 percent level since 2005-2006. So do we think it's important to fund special ed? Must not. So why? Money, taxes. So local funding, it depends. School districts either have to get it out of their property taxes...well, that's really the only source they have. The state aid formula, which is called needs, Senator Adams can explain that quite well, the TEEOSA formula, so a direct correlation exists between special ed funding and special ed expenditures on the impact of General Funds available to local school districts. And I can tell you, being on the school board, these numbers are pretty well accurate to a lot of schools. So that's why I voted for some more special ed funding. I think if we're truly serious about special ed funding then we have to vote against this amendment. Thank you, Mr. President. [LB968]

SENATOR LANGEMEIER: Thank you, Senator Wallman. Seeing no other lights on, Senator Flood, you are recognized to close on AM2504. [LB968]

SPEAKER FLOOD: Thank you, Mr. President. Members, good afternoon. I would ask for your support on AM2504. As we have discussed, the Appropriations Committee reduced already by \$3 million for both fiscal years, as explained on pages 26 and 27 of the committee report, money for Medicaid. This amendment reduces the same appropriations by an additional \$2 million in both FY '11-12 and FY '12-13. As I have said before, I'd ask you to vote yes to adopt AM2504. When the next amendment comes up, AM2503, I'm going to ask you to vote no because it can't be withdrawn, and I'll explain the amendments after that during the opening. This is part of a bigger picture and a process. I would ask for your adoption of AM2504 and I would ask for a call of the house and a roll call vote in regular order. [LB968]

SENATOR LANGEMEIER: There's been a request to put the house under call. All those in favor vote yea; all those opposed vote nay. Please record, Mr. Clerk. [LB968]

CLERK: 41 ayes, 0 nays to place the house under call. [LB968]

SENATOR LANGEMEIER: The house is under call. All unauthorized personnel please leave the floor. Senators outside the Chamber please return to the Chamber and record your presence. The house is under call. (Visitors introduced.) All members are present or accounted for. Senator Flood, you asked for a roll call vote in regular order. Mr. Clerk,

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please call the roll. [LB968]

CLERK: (Roll call vote taken, Legislative Journal page 994.) 23 ayes, 21 nays on the amendment, Mr. President. [LB968]

SENATOR LANGEMEIER: Record, Mr. Clerk. The motion is not adopted. [LB968]

CLERK: Mr. President, a priority motion: Senator Flood would move to reconsider the vote just taken. [LB968]

SENATOR LANGEMEIER: With that, we raise the call. Speaker Flood, you are recognized to open on your motion to reconsider the vote last taken. [LB968]

SPEAKER FLOOD: Thank you, Mr. President and members. I know there are a couple of you that were out of the room and didn't have the benefit of this discussion that we had prior to the vote that was just taken. I present these ideas with an eye on making room in the bigger picture of the budget for what I think is going to be a decision we make here soon regarding not only a tax cut but other A bills that are before us. I would respectfully request your support to reconsider the vote last taken and reconsider the vote and then hopefully go ahead and revote on AM2504. Thank you, Mr. President. [LB968]

SENATOR LANGEMEIER: You have heard the motion, the opening on the motion to reconsider the last vote taken on AM2504. The floor is now open for discussion. Those wishing to speak, we have Senator Lathrop. You're recognized. [LB968]

SENATOR LATHROP: Thank you, Mr. President. Colleagues, I stand in opposition to the vote to...the motion to reconsider. I think our decision was the right one. We are pulling money that was appropriated to pay Medicaid claims, we are pulling that money back and trying to put it or make it available to spend this year. This is money the Appropriations Committee determined was necessary to pay Medicaid claims. And just to be clear, that's an inexact science, paying Medicaid claims. When the Appropriations Committee set this money aside, they did so with the best information available to them, with the best estimate of what we would spend on Medicaid claims. And if the idea is that we use this money to help fund a tax cut, here is the problem with that and how this will exacerbate a problem we could have next year. If we actually spend more than we leave behind, let's say this passes and we take \$2 million out of there, if we actually needed that for next year, if we actually needed that for next year and we have taken it from the reserve to pay claims and used it for a tax cut, we will have compounded our problem because we will be short in the Medicaid account and we will have less General Funds available to us with which to satisfy the very claims that won't be paid because we've taken \$2 million out of the account. Now if it turns out, if it turns out that we don't need it, it will be available for next year and we can appropriate it to Medicaid

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claims, we can send it to the General Fund. We can turn it into a tax cut next year. But we should not do something that is actuarially unsound, and that decision has been made by our Appropriations Committee after they heard the evidence, after they heard recommendations from Health and Human Services. This is a dangerous road to go down. This is no place to make up money because if, in fact, we needed the money in this reserve to pay claims we will have spent it in the meantime. Thank you. [LB968]

SENATOR LANGEMEIER: Thank you, Senator Lathrop. Senator Council, you're recognized. [LB968]

SENATOR COUNCIL: Thank you again, Mr. President. And I, too, respectfully rise in opposition to the motion for consideration. As the Speaker stated in his motion to reconsider, he is asking this body to reconsider whether or not to take the risk associated with removing two additional million dollars from what the Appropriations Committee recommended for Medicaid funding in the event that this body should enact some tax-cut package. And I want you to think about what the Appropriations Committee recommended to this body when it presented its midbiennium budget adjustments and its budget recommendations. They took into consideration what the pending legislation before this body with appropriations implications and made their determinations on what impact that would have on the Cash Reserve and how much money would be available to us to appropriate to those yet-to-be-determined priorities. And maybe that's the problem with the agenda and the way...the timing when we have to make budget decisions and when bills with appropriation implications come before this body. But we know what the demands are in terms of Medicaid. We have some idea of what needs to be available because the Appropriations Committee has so recommended that amount. But again, to suggest that it is an absolute necessity that this action be taken in the event that there is a tax cut, you know, I know that these funds can be provided in a deficit appropriation in the next session. But what risk does it present during this budget year in terms of funding available to cover Medicaid? I know I'm not prepared to take the risk associated with not having adequate funding available for Medicaid in order to advance, and I'm going to be frank, a political agenda with regard to a tax reduction; that what we need to be looking at are what again are the priorities of this body for this state. Most of those priorities will be established as we go forward in this session, addressing the bills that have appropriations implication, but at this juncture we have the opportunity to set a priority for providing adequate funding for Medicaid claims. And I think that it borders on irresponsibility to not provide adequate funding for Medicaid claims in order to make room for a potential tax-cut bill. If we need to provide adequate funding for those residents in our state who are Medicaid eligible, then you must vote against this reconsideration motion. Thank you. [LB968]

SENATOR LANGEMEIER: Thank you, Senator Council. Senator Conrad, you're recognized. [LB968]

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SENATOR CONRAD: Thank you, Mr. President. And good afternoon, colleagues. I rise in opposition to the motion to reconsider for a variety of reasons. I'm glad actually that we do have this opportunity to talk because, engaged in negotiations off the floor, I did not have the ability to speak additionally on AM2504 and why I consider it to be poor public policy. Make no mistake about it and to reset the stage for where we are on this dreary Monday afternoon, these votes that are coming down the pike for many of us in regards to changes to the budget are a precursor or are clearly intertwined with the debate that's going to happen on the Governor's tax-cut plan, LB970. Some folks may not see it that way and, of course, that's their province to govern as they see fit, but I think that it has been well established that these votes are indeed related thereto. So with that, I think it's important that we talk about what AM2504 does and what it does is it's a one-time capture on some unexpended Medicaid funds due to a lower amount of utilization than previously projected. We can't make room for reductions to our revenue base with one-time strategies, which is what AM2504 is. I've said it off the mike; I'll say it on the mike. What those kinds of techniques are, using one-time funding strategies to take care of ongoing needs, it's putting together the budget with bubblegum and baling wire, and that's not sound fiscal policy. When we're talking about utilizing one-time expenditures, we should utilize them for projects that are special and unique and discrete, not for ongoing state obligations like Medicaid, like healthcare, like K-12 funding, like higher education, like public safety, like infrastructure. I think that's very, very important to know. Because everyone has to concede even if we do remove the \$2 million in underutilized Medicaid funds, as proposed through AM2504, there is no guarantee, there is no certainty, there is no indication that those kinds of funds will be available in the next budget cycle, period. And that doesn't concede the questions that remain in regards to utilization and why those funds aren't being currently utilized. I think when we look at the tax-cut bill and we look at the state of Nebraska's budget as contained in the three budget bills before us this session, we have to have a discussion about what our vision for Nebraska is. And the Governor has very clearly stated his and, again, he has every right and responsibility and ability to do that. And it seems to me, from what I can garner in the State of State Address and subsequent media reports, that his number one priority is improving rankings on some state-by-state ranking that a Washington think tank puts out. That's fine. He's been clear about what his priorities are. I have a different set of priorities and I think that we as a Legislature should have a different vision for this state and that includes a state where all Nebraskans have the opportunity to succeed. How do Nebraskans have an opportunity to succeed? Through access to education, through access to basic healthcare, through good roads and infrastructure, through economic development programs. I think that's a worthy and debatable vision for Nebraska that deserves as much attention as an arbitrary ranking by a Washington-based interest group, and that should be subject to debate and it is subject to debate. And if we're going to go out of our way to make room for tax cuts that remain fiscally irresponsible, we have to do so in an honest and straightforward way, not with one-time budgetary gimmicks, as represented in AM2504. Thank you, Mr. President. [LB968 LB970]

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SENATOR LANGEMEIER: Thank you, Senator Conrad. Senator Krist, you're recognized. [LB968]

SENATOR KRIST: Thank you, Mr. President. Colleagues, I voted yes on the amendment and I'm going to vote yes on the reconsider and I will vote again yes on AM2504, and I just...I would just like you to listen to a piece of logic. The Appropriations Committee got together after the budget was submitted by the Governor and they decided that \$5 million was too much of a risk to take to move out of the fund. They decided that \$3 million was more appropriate, leaving a delta of \$2 million. Now trust me, if you would, for just one second. There's \$646 million in the Medicaid fund, \$646 million and change, as they say. If our expenditures went up because of the definition...a definition is changed or because we were actually accessing more or giving more services, if it went up 10 percent that would only be another \$65 million. We're essentially saying, for whatever reason, we're essentially saying that we're taking three-tenths of 1 percent of the total of \$646 million. If I were on Appropriations, I might have done the same thing and gone conservative. Now I'm saying for this reason today, colleagues, if we're going to have a debate over LB970 or a budget cut, let's get there. Let's have that debate. This money that's being set aside right now at this particular action is not going to take the money out permanently from Medicaid. We can move the money back in, in January. But let's get to the real debate. As I stand here today right now, I am not in favor of any tax cuts, but I want to get to the point where we're debating the tax cuts. I'm sorry I raised my voice, but you know it seems to me that arguing over two-tenths of 1 percent of \$646 million and not projecting that we're going to come anywhere near those expenditures, even in raising those...the level of service, which I think we need to do with the change of definition that Senator Campbell talked about earlier, we're wasting our time, my opinion, my opinion only. Let's move on to the real debate. Let's move on to the tax cuts. Let's have a substantive debate about the tax cuts, not about manipulating money around. This is exactly what the department does all the time. You want to get upset at somebody, get upset at the department, who will take money out of any fund, put it anyplace else in a subprogram anytime they want to, or anytime they really want to move money they ask us to reappropriate. This is the shell game and Senator Conrad is absolutely right. It's ridiculous to think that they move money around this much and it's ridiculous that we would be talking about this amount of money for this amount of time. I think Senator Campbell and members of the Health and Human Services Committee have seen this issue, issues, these issues up close and personal, and I would tell you that even with a 10 to 15 percent rise in services we are not going to dip in to a point where we would touch \$646 million. And if we did, we will be back here, I will be back here in January and we'll have to reappropriate. Thanks for listening. [LB968 LB970]

SENATOR LANGEMEIER: Thank you, Senator Krist. Senator Conrad, you're recognized. [LB968]

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SENATOR CONRAD: Thank you, Mr. President. And again, good afternoon, colleagues. I want to talk a little bit more about how the appropriations process works and a little bit more about what this money really represents. We hear a lot, particularly in Appropriations when we're crafting the budget and particularly over the last many years where we've had very difficult economic conditions to operate within, that we need to act in state government more like a family budget, and when times are tough we've got to tighten our belts and buckle down. Well, let me tell you, we've done that hard work in committee and we've done that work collectively on the floor of the Legislature in adopting very, very difficult budgets over the past five years that I've been in the Legislature, not to mention including a special session wherein we had to cut almost \$400 million that had dramatic and real impacts to education, healthcare, public safety, natural resources, economic development, and the list goes on and on and on. So what our fiscal projections show us today is that we have a little breathing room in the present sense and we have significant challenges in the future, right around the corner, next year and we're going to have to deal with those. We have a roads funding bill with a significant price tag on it that is going to take effect. That's included in those projections, but that's a big driver of that deficit and we're going to...it's been the public policy choice of this body that that's something that we want to move forward on and so we have to take that into account. But when we're thinking about and talking about that family budget analogy, it never goes the other way and I think that's something that's disingenuous to a certain respect and frustrating to a certain respect, because when a family sits down and gets together their budget they say, gosh, we've got some kids starting college next year; boy, we've got a mom and dad who are going to require some additional healthcare needs so how are we going to prepare for that, how are we going to take care of those new obligations or additional obligations from what we're spending today on our basic family needs? Well, you don't run out and quit your job. You don't eviscerate the revenue base coming into that household budget to deal with future challenges. And that's the kind of question that we're talking about when we're looking at the mainline budget bills in conjunction with and in correlation to the tax-cut bills. Because we can't have a fair and honest debate on the tax-cut bills...there's two separate issues there on LB970. One is the tax policy issue, is who is the tax targeted to, who's it going to help, what are the impacts going to be, etcetera, etcetera? The second piece is, regardless of who benefits from that policy choice, can we afford it? And the projections today, which are the best projections we have based in historical fact from a nonpartisan budget office, says we cannot. So when we're talking about this family budget and how state government needs to operate in a similar manner, let's be very clear. It can't work one way. It has to be a two-way street. We can't look at obligations that we have on the horizon responsibly and run out and cut and eviscerate our revenue base. That's irresponsible. When we have a plan put forward that's more than one-time budgetary gimmicks to pay for an ongoing evisceration of a revenue base then we can start to talk about the policy choices, but we haven't heard any clear plans or examples that provide for that road map. Thank you, Mr. President. [LB968 LB970]

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SENATOR LANGEMEIER: Thank you, Senator Conrad. Senator Council, you're recognized, followed by Senator Louden. [LB968]

SENATOR COUNCIL: Yes, thank you again, Mr. President. And I appreciate Senator Conrad's remarks, but I was particularly taken by Senator Krist's comments and because I heard where he is, and you need to know where I am. He said if we want to get to talking about an income tax cut, let's get to talking about an income tax cut, if that's what we want to do. And so my question is, why don't we do that? Why do I have to be placed in a position to make...cast a vote to provide an avenue for something that may not occur? What sense does that make? And if we really want to know whether that will occur, I'm sitting here wondering why. If it's all about an income tax cut, if this amendment, the one that's being withdrawn, and the amendment following that are all for the purpose of making room for an income tax cut, why am I being asked to make room for something that, I'll be quite frank with, at this point in time I don't support? So my question is, if that's at the root or at the core of this discussion, we could have very easily gotten to that point, I believe. I'm not the Speaker but the Speaker sets the agenda. LB970 is on the agenda. LB970 is a senator priority bill. I think it's a Speaker priority bill on General File. This morning we discussed General File items. Why couldn't LB970 have been one of those General File items we discussed before we got back to this bill on Select? To my knowledge, there's nothing that prevented that from happening. But I suggest to you that someone or some groups of someone don't want that to happen, although they say if we're going to talk about an income tax cut let's talk about it, let it stand alone and be discussed in that context without and essentially forcing a proxy vote on the income tax-cut bill. Because if you're inclined to support AM2504, I guess you can presume that you're inclined to support LB970. Well, let's get to LB970 then. There have been ample reasons given for why it is not sound budgeting policy to advance LB968 with AM2504. Now I listened to all the accolades and kudos for the wonderful leadership that's been provided to this body by the Appropriations Committee Chair. The Appropriations Committee Chair says AM2504 is risky. Apparently he feels strongly enough about it because he didn't vote in favor of AM2504. And I think that's because, and I don't want to speak for Senator Heidemann, but he feels strongly about the need for us to be fiscally responsible and he doesn't view the taking away of this excess expenditure from the Medicaid funds under Department of Health and Human Services to be fiscally sound, and as Senator Conrad stated in her comments, to deal with the possible evisceration of this state's revenue basis by a couple of bites at an apple that may or may not be there in the future. And it's very easy to say what the body can do next January but a whole lot of people who are sitting here today won't be here next January. And so if this body is going to make a determination about whether or not we're going to provide some tax relief via LB970, it should be made on the basis of whether that's sound policy, taking into consideration our current budgetary situation and the forecast for the out years, not by forcing first...before...this is a cart before the horse situation as far as I'm concerned. We're talking about making

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room for something that we don't know whether it needs to be made room for. [LB968 LB970]

SENATOR LANGEMEIER: Time. [LB968]

SENATOR COUNCIL: Thank you. [LB968]

SENATOR LANGEMEIER: Thank you, Senator Council. Senator Louden, you're recognized, followed by Senator Dubas. [LB968]

SENATOR LOUDEN: Thank you, Mr. President, members of the body. I voted against AM2504 and I'll proceed to tell you why. I'm a believer in committee work and I think most of this stuff should be done in committee and, as it works around here, that's usually where the best legislation comes out. The Appropriations Committee came up with the bill, LB968, which they had worked on and brought forwards and had their amendment onto that bill, and as the Governor had asked for a \$5 million cut in the General Fund appropriations midbiennium and they cut \$3 million of that. They also cut another \$14 million of Medicaid aid that they thought they could get by with. And now we're taking another \$2 million for the next two years. Now part of this money at the present time in Medicaid, we're not funding the doctors. We're cutting their percentage down so we have to be careful about what we cut on Medicaid. In these rural areas, these doctors get to where they can't afford to treat people and some of these nursing homes will get to where they can't afford to keep them. If they don't have about 50 percent full-pay residents in those nursing homes, they can't afford to operate them. If we cut it down so that the Medicaid percentage cuts some more, then we will be putting many a nursing home in a position that they probably can't operate anymore. In the rural areas of Nebraska, operation of these nursing homes is a big deal. It's actually some type of economic development there because a lot of small towns several years ago actually floated bonds to start their nursing homes. So as we go through this and as we cut this, some of this money would have federal matching funds. And so if you don't have the money to pay for some of these Medicaid issues then you don't get your federal matching funds. And they usually...I think the federal matching funds are probably 50-some cents to 44, just a little bit over a one-to-one ratio on matching funds. I've been involved in some of the nursing home projects we have, in the process of building on one up in Whiteclay, and so I know where we come about with some of the Medicaid and how it works through the Medicaid offices, so I can't see that by cutting this where we're going to gain anything. I think there's some unintended consequences here. I feel that the Appropriations Committee did a good job on the beginning and I don't think that by amending some of this and trying to find some money in here that this is the way to go, so I haven't...I don't think I can support the reconsider motion. Thank you, Mr. President. [LB968]

SENATOR CARLSON PRESIDING

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SENATOR CARLSON: Thank you, Senator Louden. Senator Dubas, you're recognized.
[LB968]

SENATOR DUBAS: Thank you, Mr. President. Good afternoon, colleagues. You know, we all have to sift through all of the information that comes before us, either through committees or through contacts with our constituents or through floor debate or what have you to get to a level of comfort to make our decision one way or another. And you know, we don't always all agree on how we should get from point A to point B. And even though I may not agree with some of my colleagues, I certainly do respect the process that they go through to reach their decision. And so we're discussing some very important things today and I guess I just wanted to share with you why I've reached the decision that I have to vote in the manner that I have and hope that there can be a respect for how I've reached my decision. This is certainly not a knee-jerk reaction, my opposition to the amendment and to the tax cuts that we'll be talking about in the near future. I recognized early on, even before session started, that we were going to be challenged. And I'm going to share with you a little piece out of a column. I write a weekly column for my local newspapers and this was one of the first columns that I wrote in January and I referenced that because we are seeing some light at the end of the recession tunnel, many are lining up with requests for relief from tight budgets or recommending a variety of tax breaks. None of these proposals are without merit, but anything that takes away from our revenue stream or requires more spending must be given due diligence. The Legislature is fortunate to have a Fiscal staff that crunches numbers and studies historical trends. They provide a wealth of information and invaluable direction when it comes to advising senators on the impact of our fiscal policies. They create the daily budget worksheet showing the status of our General Fund, impacts of bills we pass, and how much is in our savings account. That information gives us an accurate snapshot of where we are today, at the end of the current biennium, and where we will likely be with future budgets. We cannot make current financial decisions without fully understanding how much those decisions will impact our needs for the future. And so caution is still the name of the game. While Nebraska is better off than most of the nation, the numbers still demonstrate a slow and soft recovery. Those facts have not changed for me. I sat down early in the session with our Fiscal Office and had them walk through a lot of things with me. I probably spent over an hour with them just so that I could have a good, solid grasp of not only where we are today and the things that we need to do today but where we're going to be in the out years, as the Chair of the Appropriations Committee has lectured us on many occasions, and I've taken what he has told us to heart that the easy decisions are probably those decisions that we make for today. It's understanding those decisions for the out years where it gets more difficult. We are still in very uncertain economic times. Again, Nebraska has probably been insulated more than most of the country is, but our ag economy has held us up through these difficult times and still appears to be strong. Prices are good, but also our inputs are rising. You look at the energy cost, you look at

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land valuations. All of those things factor into what keeps a strong ag economy going. And with the volatility of our economy now and the impact of what happens around the world being almost immediate... [LB968]

SENATOR CARLSON: One minute. [LB968]

SENATOR DUBAS: Thank you, Mr. President...we certainly cannot ignore those facts. And if the ag bubble would burst, we would certainly be looking at some very serious ramifications from that. By no means do I want that bubble to burst. I'm very pleased to have had a couple of good years. It's been very helpful not only for my family but, again, for the entire state of Nebraska. So we have...again, how I've reached my decision, why I've reached my decision is not a matter that I have taken lightly. I've looked at the big picture. You know, I want tax cuts just like the next person does, but I think by coming back next year, where we can put everything on the table and really take a holistic approach to putting good, sound tax policy in place that will benefit all of our citizens across the state, I think is the best approach... [LB968]

SENATOR CARLSON: Time. [LB968]

SENATOR DUBAS: ...to dealing with this. Thank you. [LB968]

SENATOR CARLSON: Thank you, Senator Dubas. Senators wishing to speak include Gloor, Conrad, Sullivan, Krist, and others. Senator Gloor, you're recognized. [LB968]

SENATOR GLOOR: Thank you, Mr. President. Good afternoon, members. I speak with a high degree of candor to you. I did not vote on AM2504 and I did not vote for several reasons, both of which had to do with aggravation. [LB968]

SENATOR CARLSON: (Gavel)

SENATOR GLOOR: Part of the aggravation has to do with issues that I have no interest in discussing, except to say that I had a career where I had the opportunity to get my hackles up pretty regularly and resisted the urge most times, which is the reason I didn't get canned in almost three decades of service, but the other reason of aggravation that's far more important on my nonvote is I continue to struggle by being on the fence. What Senator Krist points out, has done so twice now, is a cold, hard reality and a reason to vote yes on AM2504. On the other hand, part of my aggravation is the fact that this body and the department treat Medicaid in many ways, my opinion, as just a giant pot of money they pour back and forth that gets sloshed around without any specific long-range plan of what we're going to do with the challenges of Medicaid funding in this state, especially as relates to provider rate, except to continue to cut or hold the line on any appropriate, and I emphasize appropriate, increases and will squeeze efficiency into the system. That's the same philosophy that has people

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disciplining their children with the back of their hand, as far as I'm concerned. Somebody have a plan on what to do with Medicaid? I go home and talk to providers who say, what are you going to do with Medicaid legislatively? And I say, well, I have these pilot projects about medical home. And I'm tired of sounding like a whiner and an excuse maker for the fact that we have no plan on what to do with Medicaid except we're just going to deny it money, or if we give it money it will be in half percent increments at a time. And it's aggravating to me. And so I struggle with AM2504 and should have got up to the mike before and expressed that, and I should have made a decision one way or the other. I will do that now, although I continue to struggle with what decision to make. There are two appropriate sides to this. One plays more to my emotion; one plays more to my common sense. I will vote for reconsideration and I will vote on AM2504, if given that chance. [LB968]

SENATOR CARLSON: Thank you, Senator Gloor. Senator Conrad, you're recognized and this is your third time. [LB968]

SENATOR CONRAD: Thank you, Mr. President. Good afternoon again, colleagues, for a third time. I think again we're continuing to have important dialogue on these very important issues that are before us and I think that it's important that we talk a little bit more about how deficit appropriations work and where we are in this budget cycle and where we will be next year. At the...during long session is when we craft our state budget. We use a biennial budgeting process and then we have the ability to look, with accurately updated fiscal projections, based on revenue Forecasting Board and work with Legislative Fiscal Office, about really where we are. Well, we'll have a few more of those opportunities after we go through this process this year and that really helps to balance things out and give a more comprehensive, complete picture about where we are, and I think that's critically important due to the nature and volatility of this recovery and the uncertain economic conditions that we're operating within. Even though things are much, much better in Nebraska and much, much better this year than they have been, it's still important that we utilize a conservative and comprehensive strategy when budgeting because it's always served our state so well. So where we are this year with deficit appropriations is going back to make generally minor adjustments about things that have come to fruition in the meantime, from when we first set the biennial state budget. And it's been said by a few people on this floor, well, we go ahead and we always fill those deficit requests. Well, we don't actually. We look at those with a very careful eye and according to the revenue resources that we have available, and the deficit requests that we don't fill have to be absorbed by the agency or the program or the budgetary line item that they emanate from. So to say, well, go ahead and don't worry about it right now because if there is a deficit on this or any other program down the road we'll go ahead and take care of that, that's actually not how our budget works. It's actually not what we do. We don't automatically fill deficit requests. And when we don't automatically fill deficit requests, that means that all of the existing obligations and new obligations then have to compete for the same amount of resources. So what does

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that equate to? It means...well, for the most part, most state agencies which have anywhere from about 85 percent to 90 percent, give or take, of their operating budgets come from staff--employees' salaries and benefits, for the most part. And that's pretty typical for most of our many state agencies. So how do you really get cuts then and how do you make up the difference or absorb costs on already stressed programs? By laying people off, state employees, by cutting salaries and benefits. And so then you have less and less people to do more and more and more work on already stressed systems. So let's be very careful about saying there's no consequence to this because we always fulfill deficit requests. We actually don't always fill deficit requests and that's something that we need to be very cautious about. In regards to the fact that it's been stated by a variety of senators on the floor that we can safely take this \$2 million because HHS says that it's not going to be utilized, etcetera, etcetera. Well, again, let's exercise a little caution and a little skepticism before we move down that road. If you look just at this budgetary cycle, just this year in 2012, HHS has now brought forward... [LB968]

SENATOR CARLSON: One minute. [LB968]

SENATOR CONRAD: Thank you, Mr. President...\$20 million on the table in reallocations and reappropriations that they didn't previously identify at the start of the budgetary cycle in January to pay for the child welfare issues. Twenty million dollars of reallocations just magically reappeared in the course of just a few months and at the behest of a child welfare crisis, namely when KVC pulled out. So there's \$20 million they didn't previously identify that they're reallocating. Here is \$2 million that they are reallocating. How many other millions of dollars exist within this budget that we need to have identified so that we can make sound policy decisions at the git-go instead of here at this stage which seems very, very politically convenient? Thank you, Mr. President. [LB968]

SENATOR CARLSON: Thank you, Senator Conrad. Senator Sullivan, you're recognized. [LB968]

SENATOR SULLIVAN: Thank you, Mr. President. You know, I didn't arrive at the green vote on AM2504 easily, and I'm not having an easy time considering the reconsideration motion as well. But I try to do a little rationalizing. And of course we all know you can rationalize anything. First of all we are definitely in a tug of war here. And it was a lot easier, I think, for my first three years down here just to take the word and the hard work, I will underscore that, of the Appropriations Committee and the message that said don't mess with our work to heart and just let it go. Well, as someone said earlier today, we are definitely not doing that now, and we're into the sausage-making process of this budget process. And it is a struggle. And it makes us, as I said, I think, sometime last week, gives us a knot in our stomach. But I've tried to rationalize this. And I've tried to pull it down and drill it down to just this particular amendment. We can debate the motives of why we're here; we can commiserate about LB970, which I know we will,

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going down the road. But in making my decision on AM2504, I have essentially just drilled it down to what it is, looking at what has been said, this excess appropriation for Medicaid expenditures, and asking myself is it worth the risk. And admittedly it is a risk. That's where my comfort level is not very high on this. But I'm willing to take that risk and to vote in favor of the reconsideration, as well as the amendment. Thank you.
[LB968 LB970]

SENATOR CARLSON: Thank you, Senator Sullivan. Senator Krist, you're recognized.
[LB968]

SENATOR KRIST: Thank you, Mr. President. And good afternoon again, Nebraska and colleagues. This is the last time I will speak. I just wanted to reiterate, first of all, what we heard the Appropriations Chair say last week is that when the Appropriations Committee votes out their projected budget, it now ceases to be the ownership of, or the authorship of, the Appropriations Committee. They can take pride in bringing us a skeleton, a straw man, a blueprint, but it no longer belongs to the Appropriations Committee. It's our budget. So it is very appropriate, I think, and Senator Sullivan just said she drilled it down to her priorities, everyone has drilled it down, I think, to their own read on how it reflects their priorities. And I respect the fact Senator Sullivan very eloquently said, you know, and I'll just paraphrase, regardless of what the motivations or where we are right now, it comes down to removing money from a program, from a savings account, if you will, that is overappropriated \$646 million. Let that sink in for just a second again, \$646 million. If the projected increase, if we do, changing definitions and all the rest, if the projected increase in services would come up and it would come up another 10 percent, it would never hit that savings level in the next biennium, in this year or in the next biennium. We are talking about a reduction of what the Governor originally proposed in his budget of \$5 million a year, which the Appropriations Committee conservatively reduced to \$3 million, and now we would take it back to \$2 million, and that matches the \$5 million that was initially proposed. I will vote for the reconsider. I will vote for the amendment, as I did the last time around. I will do so as a part of a 49-member Appropriations Committee, a floor committee, that will turn out our budget. And then I will dig my heels in and I will debate LB970. And as I said on the floor earlier, the two have nothing to do with the other at this point in my decision process. I cannot support LB970 as it appears on that gadget. So the next debate about LB970 should happen when LB970's number is on that board. Think about it again. It is less than...it is three-tenths of 1 percent of the total budget. We are not going to get in trouble with this one. And I ask you to trust me; and in the words of my Chair, Senator Campbell, it is not a factor, as we watch the money being shuffled back and forth by DHHS. We need to put the money where we need it today to do the job that we need to do today. And if we need to put it back in savings in January or take additional money out and appropriate more, we will do that; that's our job. We appropriate and then we apply the oversight, they execute. Thank you, colleagues. [LB968 LB970]

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PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Thank you, Senator Krist. Senator Howard. [LB968]

SENATOR HOWARD: Thank you, Mr. President and members of the body. Senator Louden makes such a good point in reminding the body that with this proposed cut we will be abandoning, abandoning matching federal dollars and cutting funding for services much, much deeper than it would appear at first look. The \$12 per month tax break, that is likely to be the proposal, is going to have the effect of, quite possibly, placing a dependent senior on the street when he or she sees her nursing home close. I remember the anguish on the floor a few years ago when supplemental funds for Meals on Wheels was cut from the budget. That was a very hard evening and we fought to get that back in; we couldn't override the Governor's veto. And I had many e-mails from seniors saying, we won't be able to continue living independently in our homes without this service. Unfortunately, I'm seeing a pattern of actions that are harming our senior citizens and I, for one, am not going to vote to support this. If Senator Louden would like, I'll offer the remainder of my time to him. He worked very diligently on getting a nursing home facility opened in his area and I remember all the effort that he put into that and I think he could say more on that subject. [LB968]

PRESIDENT SHEEHY: Senator Louden, you're yielded 3 minutes 15 seconds. [LB968]

SENATOR LOUDEN: Thank you, Mr. President, and thank you, Senator Howard. Yes, we've been at it about five or six years getting a nursing home built up there in Whiteclay, Native American nursing home. The federal government is paying most...well, paying all of the bills and a partial...the work has come about by getting it set up so that the state of Nebraska wasn't liable for any of these nursing home costs. To start with, as you start a new nursing home, it's never been done in the state of Nebraska that a new nursing home has been started that was being paid entirely by Medicaid costs. And so there's been a problem with that, but it can be resolved. It's just a matter of getting agreements lined up and regulations set up. What I'm concerned about is the nursing homes that are in these rural areas. I can think of many towns, Hay Springs for instance, Crawford, different towns that actually put up money of their own in order to build these nursing homes so they would have jobs in those areas and also a way of servicing their local people as they got elderly. All of those homes, as you look at them, have to have about half of the people in there are full pay; in other words, they aren't on Medicaid. And as we keep cutting on some of these issues like this, whether it will cut down into the Medicaid directly with these amendments that we have here I'm not sure, but nonetheless, whenever we cut money out of that Health and Human Service and out of Medicaid it can have an effect on that. And there was times when some of these homes had...were even thinking about closing up, which would be a real devastating issue for some of those areas. They nearly lost the one in Gordon here a few years ago with the nursing home. So there's things we have to be careful of,

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especially unintended consequences, if we start cutting too much into Medicaid just for the fact that we want to make government smaller or save some money or make it look better and less spending. [LB968]

PRESIDENT SHEEHY: One minute. [LB968]

SENATOR LOUDEN: We are pretty much...have been delegated to looking after our elderly through these Medicaid projects. This is a program that has been going on for years and years. By now it's probably getting to be close to 30 years we've had something like this. So we're pretty well locked into doing something along this line. So we have to be very careful and make sure that we continually fund it. It isn't something that's going to go away, or it isn't something that we can turn around and go back on. And I appreciate the time and thank you, Senator Howard, and thank you, Mr. President. [LB968]

PRESIDENT SHEEHY: Thank you, Senator Louden. Thank you, Senator Howard. Senator Lautenbaugh. [LB968]

SENATOR LAUTENBAUGH: Question. [LB968]

PRESIDENT SHEEHY: There has been a call for the question. Do I see five hands? I do. The question is, shall debate cease? All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB968]

CLERK: 28 ayes, 10 nays to cease debate, Mr. President. [LB968]

PRESIDENT SHEEHY: Debate does cease. Senator Flood, you're recognized to close on the motion for reconsideration. [LB968]

SPEAKER FLOOD: Thank you, Mr. President. Members, this is just the vote that allows us to go back and reconsider the vote last taken on AM2504 for the reasons expressed by myself in the opening. I do believe that more members have had the benefit of listening to the discussion and some were gone during the first debate on AM2504 and I look forward to the opportunity to reconsidering that vote in hopes of adopting AM2504. Please vote yes for this reconsider motion. I'd ask for the call of the house and a vote in roll call order...a vote in regular order. [LB968]

PRESIDENT SHEEHY: There has been a request for the call of the house. The question is, shall the house be placed in under call? All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB968]

CLERK: 44 ayes, 0 nays to place the house under call. [LB968]

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PRESIDENT SHEEHY: The house is placed under call. All unexcused senators please report to the Legislative Chamber. All unauthorized personnel please step from the floor. The house is under call. Senators, please record your presence. Senator Flood, all members are present and/or accounted for. Members, you've heard the closing on the motion to reconsider AM2504. There has been a request for a roll call vote, regular order. Mr. Clerk. [LB968]

CLERK: (Roll call vote taken, Legislative Journal page 995.) 29 ayes, 19 nays on the reconsideration. [LB968]

PRESIDENT SHEEHY: The motion for reconsideration is adopted. We'll now return to floor discussion on the AM2504. The call is raised. Members requesting to speak: Senator Council, followed by Senator Conrad and Senator Wallman. Senator Council. [LB968]

SENATOR COUNCIL: Yes, thank you very much, Mr. President. I remain opposed to AM2504 and I think it is important, again, for us to focus in on the budget and the budget process and priorities because that's what we always talk about, funding our priorities. And Medicaid is one of the areas that we have identified as a priority in a sense that we've prioritized assisting and providing services to our most vulnerable citizens, and those are principally our children but those who live in poverty. And I listened intently to Senator Gloor's very genuine and passionate statement of why he voted the way he voted. And I want to say that I've also listened to others who have talked about the dissipation of medical service providers in their communities. And in fact, just this morning when we were addressing the bill to provide the sales and use tax exemptions to mental health facilities, I heard at least two of my colleagues, who are supportive of the bill, state that, you know, without these sales and use tax exemptions these not-for-profits have to look to cut other parts of their budgets. And in that regard, they're already struggling because we don't reimburse them at the cost of what it takes for them to provide the services that we expect to provide them. And why is that, ladies and gentlemen? Because we cut Medicaid provider rates. And last year we cut the Medicaid provider rates by 2.5 percent because we were in tough budget times. And the picture started to look a little brighter as we're looking at the midbiennium budget and the Appropriations Committee recommended restoring 1.5 percent of those. Now there is \$2 million in excess expenditure authority in the Medicaid budget. Why don't we look to increase Medicaid provider rates with it? If that's our priority, that's the option that is available to us, because, clearly now, that money is available. The Appropriations Committee, I think, was being fiscally responsible, probably a little too fiscally conservative in that regard, but in their conservatism in preparing the budget, instead of restoring all of the cuts that we made in Medicaid provider rates, they only restored 1.5 percent of it and said that you need to keep this excess expenditure, this additional \$2 million, because \$5 million was asked for. And I look at this and I say, what's our role and function as a body? And I would ask Senator Conrad if she would yield to a

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question. [LB968]

PRESIDENT SHEEHY: Senator Conrad, would you yield to Senator Council? [LB968]

SENATOR CONRAD: Yes, of course. [LB968]

SENATOR COUNCIL: One of the comments that has been made by my colleagues is how DHHS has, you know, mishandled the child welfare reform system and how money has been shuffled around to cover. Now correct me if I'm wrong, Senator Conrad, but what the Appropriations Committee recommended, at least for 2012-13, \$17 million to cover... [LB968]

PRESIDENT SHEEHY: One minute. [LB968]

SENATOR COUNCIL: ...the child welfare shortfalls, correct? [LB968]

SENATOR CONRAD: At least, yes. [LB968]

SENATOR COUNCIL: Was that in the budget from the Governor? [LB968]

SENATOR CONRAD: No, and I'm glad you asked that, Senator Council, because I think it really helps to bring this discussion to a fine point. It would be one thing to be talking about budget adjustments to make room for a tax cut if, indeed, we were taking care of our state obligations, but when you go back and you look at the Governor's midbiennium budget adjustments, pages 12 through 14 detail his plan on HHS and there is not one penny in there for child welfare reform or to fix the child welfare reform that his administration has bungled. So I find that a curious starting place. [LB968]

SENATOR COUNCIL: Thank you. And let's talk about the priorities. Let's point fingers where fingers deserve to be pointed, and Senator Krist is correct how DHHS has mishandled it, but in terms of the responsibility to fix it, I think that our Appropriations Committee acted responsibly and in a fiscally conservative manner in setting the adjust... [LB968]

PRESIDENT SHEEHY: Time, Senator. [LB968]

SENATOR COUNCIL: Thank you. [LB968]

PRESIDENT SHEEHY: Thank you, Senator Council. Senator Conrad. [LB968]

SENATOR CONRAD: Thank you, Mr. President. Good afternoon, colleagues. And thank you, Senator Council, for that fantastic dialogue and I would direct colleagues to go back and review the Governor's budget proposal for this session and look for

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yourself in terms of where we are with this debate and where we started, because I think it is interesting and illustrative. I did want to talk a little bit in response to some of the comments that were made about siloing or looking discretely at just the issue that may be before us. And let's be clear, again, each individual senator has a right to justify or govern as they see fit. But proponents and opponents on each side of this tax cut issue and these budgetary issues have all conceded that we can't separate these votes; that these votes are specifically intended to make room for what I contend are fiscally irresponsible tax cuts and that point has been well established by folks on both sides here. Because otherwise in our state budgeting process, whether it's a spending proposal or a tax cut, you have to put forward a plan for how you're going to pay for it. And, again, what I challenge folks who are supporting AM2504 to do is to talk about how a one-time grab of underutilized Medicaid funds to the tune of \$2 million can pay for an ongoing tax cut. I have yet to hear one explanation from proponents about that. How does a one-time \$2 million grab pay for a tax-cut bill with a price tag of, I think, over \$128 million on it in the second or third year? I'm not saying it as a trick question, that's an honest question that I'm looking forward to hearing a legitimate response from any proponent about. I'm eager to hear it. I'm hoping that lights start to turn on and explanations are provided to the record and to the public and to all of us who are struggling with these issues, because the two don't square. How does a one-time grab of underutilized Medicaid funds, to the tune of \$2 million in AM2504, pay for an ongoing tax cut with a price tag on it that is over \$100 million? How do any of the other amendments to the budget bill that are meant to carve out or pay for these tax cuts do the same? It was reported in the paper this weekend, the \$10 million amendment changed to the budget on special education was a trade-off to get votes on the tax cut, pure and simple. If that's a false media report, I'll look forward to reading the correction. But I'm going after the best information that I have available. So to say that we're separating votes, again, that's up to the conscience and province of each individual senator, but proponents and opponents on each side of this budgetary debate, which includes the tax-cut bill before us, have conceded that we can't separate these votes. And we shouldn't separate these votes because it goes to our bottom line; it goes to our fiscal health presently and into the future. And when we want to talk about priorities, and when we want to talk about a vision for how our state should look, I think that it has to be broader than what one Washington-based think tank says about where we fall in some arbitrary ranking. I think we have to listen to everyday Nebraskans who came to our committee, who come to your committees and talked about the needs that they have in the area of education, healthcare, natural resources, economic development, and a lot of those pressing obligations... [LB968]

PRESIDENT SHEEHY: One minute. [LB968]

SENATOR CONRAD: Thank you, Mr. President...have a price tag on them. So if we're going to equate the state budget to a family budget and we know we have additional financial obligations on the horizon, why are we talking about...why are we even talking

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about whether or not we can afford a tax cut? The fiscal projections are clear; common sense dictates what we need to do to move forward in a responsible manner. Let's stop playing budgetary games. Let's have an honest dialogue about whether or not LB970 can compete for the funds that are available, the \$17 million on the floor, but let's not for one second try and separate the votes or say that we're going to pay for an ongoing tax cut with a one-time \$2 million grab. Thanks, Mr. President. Thank you, Mr. President. [LB968 LB970]

PRESIDENT SHEEHY: Thank you, Senator Conrad. Senator Wallman. [LB968]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. Would Senator Campbell yield to a question? [LB968]

PRESIDENT SHEEHY: Senator Campbell, would you yield to Senator Wallman? [LB968]

SENATOR CAMPBELL: Yes, certainly. [LB968]

SENATOR WALLMAN: Thank you, Senator. With today's reimbursement rate for nursing home from the state on Medicaid, is that sustainable for nursing homes? Could they live on just those clients? [LB968]

SENATOR CAMPBELL: Well, actually we took pretty good action last year, in this session in passing LB600 which allowed long-term care facilities to put money aside to draw down more federal dollars. And I think we'll probably have to evaluate where that program is; but if they're participating in that program, they should be okay, Senator Wallman. [LB600 LB968]

SENATOR WALLMAN: With total Medicaid patients or clients? [LB968]

SENATOR CAMPBELL: I'm sorry. [LB968]

SENATOR WALLMAN: With Medicaid populace in the facilities? [LB968]

SENATOR CAMPBELL: Yes, LB600 covered the long-term care facilities and allowed them to put in more money in order to draw down the federal dollars. [LB600 LB968]

SENATOR WALLMAN: Thank you. And it did really help them out. But still, private payers pay a little more in the nursing home. I got three aunts in nursing homes; one of them is 100, two of them are over 95 and private pay. You think that cost a little money? Hopefully they have enough money and don't have to ask me. But anyway, folks, we have to be careful here. You know, it just seemed like \$2 million...I heard people say that's not much. Then why are we talking about it? Why should we even talk about \$2

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million then? If you don't think it's much, we should just leave it alone. And so that's why I'm against AM2504. And I'd yield the rest of my time to Senator Louden. [LB968]

PRESIDENT SHEEHY: Senator Louden, you're yielded 3 minutes. [LB968]

SENATOR WALLMAN: I guess he's not here. Thank you, Mr. President. [LB968]

PRESIDENT SHEEHY: Thank you, Senator Wallman. Senator...members requesting to speak on AM2504 to LB968: Senator Lautenbaugh, followed by Senator Schumacher. Senator Lautenbaugh. [LB968]

SENATOR LAUTENBAUGH: Question. [LB968]

PRESIDENT SHEEHY: There has been a call for the question. Do I see five hands? I do. The question is, shall debate cease? All those in favor vote yea; opposed, nay. Senator Lautenbaugh. [LB968]

SENATOR LAUTENBAUGH: I would request a call of the house. [LB968]

PRESIDENT SHEEHY: There has been a request for the call of the house. The question is, shall the house be placed under call? All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB968]

CLERK: 30 ayes, 1 nay to place the house under call. [LB968]

PRESIDENT SHEEHY: The house is placed under call. All unexcused senators please report to the Legislative Chamber. All unauthorized personnel please step from the floor. The house is under call. Senators, please record your presence. Senator Council, the house is under call. Senator Lautenbaugh. [LB968]

SENATOR LAUTENBAUGH: I'm fine with proceeding. [LB968]

PRESIDENT SHEEHY: Members, the question before the body is on shall debate cease? Senator Lautenbaugh, roll call, call-in? [LB968]

SENATOR LAUTENBAUGH: Call-in, sir. [LB968]

PRESIDENT SHEEHY: Senator Lautenbaugh is accepting call-ins. [LB968]

CLERK: Senator Gloor voting yes. Senator Nelson voting no. Senator Smith voting yes. Senator Harms voting no. Senator Wightman voting no. Senator Ken Haar voting no. Senator Lambert voting yes. Senator Pahls voting yes. Senator Coash voting yes. Senator Lathrop voting no. Senator Krist voting yes. Senator Adams voting yes. [LB968]

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PRESIDENT SHEEHY: Record, Mr. Clerk. [LB968]

CLERK: 25 ayes, 13 nays. [LB968]

PRESIDENT SHEEHY: The motion to cease debate is adopted. Senator Flood, you're recognized to close on AM2504. [LB968]

SPEAKER FLOOD: Thank you, Mr. President, members. This amendment has had plenty of discussion today. As you recall, it takes \$2 million each fiscal year from the Medicaid Program, puts it back in the General Fund. This amendment reduces by \$2 million in both FY '11-12 and FY '12-13. We have had plenty of discussion. I would graciously ask for your affirmative support and your yes vote for AM2504. Thank you, Mr. President. I would call for a...we are under call, I would ask for a roll call vote in regular order. [LB968]

PRESIDENT SHEEHY: Thank you, Senator Flood. You have heard the closing of AM2504 to LB968. Mr. Clerk, there has been a request for a roll call vote in regular order. [LB968]

CLERK: (Roll call vote taken, Legislative Journal page 996.) 28 ayes, 19 nays, Mr. President, on the amendment. [LB968]

PRESIDENT SHEEHY: AM2504 is adopted. The call is raised. Next amendment, Mr. Clerk. [LB968]

CLERK: Mr. President, the next amendment, Senator Flood, AM2503. (Legislative Journal page 970.) [LB968]

PRESIDENT SHEEHY: Senator Flood, you're recognized to open on AM2503 to LB968. [LB968]

SPEAKER FLOOD: Thank you, Mr. President and members. This amendment would have taken...does take \$1.85 million out of the budget that is set to go to behavioral health aid in Program 38. Pursuant to what I said on the opening of the last amendment, I can't withdraw this because the question has been divided pursuant to the rules. So I'm asking you to vote no on this. I think we had a pretty good discussion in the broader picture on Friday and I know Senator Campbell and Senator Gloor, as Health Committee members, and some Appropriations Committee members, and many of you expressed concern about Program 38, reduction in funding. I felt that this was something that should be done in terms of withdrawing it. Since I can't withdraw it, I'm just asking you to vote no. It will allow us to go on to the next amendment. And I will join you in voting no and I would appreciate your no vote. Thank you, Mr. President. [LB968]

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PRESIDENT SHEEHY: Thank you, Senator Flood. You've heard the opening to AM2503. Members requesting to speak, Senator Nordquist and Senator Council. Senator Nordquist. [LB968]

SENATOR NORDQUIST: Thank you, Mr. President and members. I appreciate that Speaker Flood is asking for a no vote on this. Now we can continue to maintain this funding in the budget. I think, obviously, our regions need our investment. I just want to get into the record, though, correspondence related to the regions' budget, the Division of Behavioral Health's budget, specifically on the \$3.7 million in behavioral health aid that is being transferred from Program 38 to meet the needs in child welfare. When we had Director Adams in, in Appropriations, he noted that the reason we have that \$3.7 million was based on historical numbers and projected savings. The regions had some questions and concerns about that. I'm not completely...I'm not an expert on the entire process, but, ultimately, toward the end of the fiscal year there is a practice where they...the department will...or the division will reconsider regional contracts to reimburse for uncompensated units of care. And we just want to get on to the record that that would continue, that that \$3.7 million wasn't some savings because they weren't going to reconsider contracts and allow contract amendments. So we asked...Senator Mello and I sent a letter to Director Adams on March 15 asking for an assurance that the division will continue as in years past to approve amendments to contracts with behavioral health regions as appropriate to move dollars around in the final quarter of the fiscal year to ensure providers have resources they need to provide services. And Director Adams promptly responded the next day. And I just want to get this into the record that the practice...quote: The practice of considering regional contract amendments to reimburse for uncompensated units of care will continue this fiscal year. This consideration was included in the projections given to the Legislature. So with that assurance, I think we are comfortable with the transfer of the \$3.7 million from Program 38 to meet the needs in the child welfare system. So I just wanted to get that on the record. Thank you, Mr. President. [LB968]

PRESIDENT SHEEHY: Thank you, Senator Nordquist. Senator Council. [LB968]

SENATOR COUNCIL: Yes, thank you, Mr. President. And I respect the Speaker's recommendation on this, but I'm still troubled. This amendment was offered and, apparently, there was some rationale for selecting this program and this amount to be reduced. And I guess I'm troubled as to who would have provided that recommendation, in light of everything that Health and Human Services Committee knows about this behavioral health aid fund and apparently were able to communicate that knowledge to the Speaker to the point that he reconsidered and is no longer willing to advance this amendment. But I would think that I shouldn't be the only one that is questioning why this was selected in the first instance in light of everything that we know about the behavioral mental health issues in this state. And what the committee has been dealing

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with for several months, why there was ever even any consideration given to this amendment is the question you all could be asking yourselves. And in light of that, we also need to look at the upcoming amendment with the same degree of scrutiny, because what it brings to my mind is that there was a bunch of random, arbitrary selections made about how to arrive at the \$8.9 million, or whatever the exact amount is, to provide for this proposed tax cut. And don't care how you find it, just find it, because when we were discussing AM2504 the question was asked several times, well, how did you come up with \$10 million to provide to special education funding, and no one could tell you precisely where that number came from. And the bottom line is that it was arbitrary, is an arbitrary number. And the decision to suggest through AM2503 was equally as arbitrary. And when the reasons for not doing it were as compelling as they are, the Speaker really had no other choice but to withdraw. But he can't, so he's going to ask you to vote against it. Well, I need the record to be clear; I would have voted against it, period, because here again we weren't concerned about this program, per se. We were concerned about the money that this program fund represented in terms of being able to squeeze this proposed tax cut into our budget. And I think you ought to take notice of the fact, the response to the question that was...that I posed to Senator Conrad and the response, and you can do the research yourselves, but all of this complaining, all of this criticism about the Department of Health and Human Services and how they've mishandled this and mishandled that, I'm reminded of the fact that when... [LB968]

PRESIDENT SHEEHY: One minute. [LB968]

SENATOR COUNCIL: ...we need to talk to someone from the Department of Health and Human Services, we can't just talk to them. If we call and ask them to come over to our office and sit down and have a discussion about a particular item, they can't just do that. They have to get the expressed permission of the Governor. And so when we look at this issue, we look at this budget, we look at the \$17 million that has to come out of the General Fund to cover the mishandling, you need to give some thought and consideration to the fact that if these items, fixing child welfare, providing for behavioral mental health, if those priorities and those concerns are shared by the executive branch, then why wasn't it addressed in that budget proposal? [LB968]

PRESIDENT SHEEHY: Time, Senator. Thank you, Senator Council. Seeing no additional requests to speak, Senator Flood, you're recognized to close on AM2503 to LB968. Senator Flood waives closing. The question before the body is on the adoption of AM2503 to LB968. All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB968]

CLERK: 0 ayes, 34 nays on the amendment, Mr. President. [LB968]

PRESIDENT SHEEHY: AM2503 is not adopted. Mr. Clerk, items for the record. [LB968]

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CLERK: Thank you, Mr. President. A new resolution, LR498 by Senator Pahls, a study resolution, will be referred to the Executive Board. Enrollment and Review reports LB985A correctly engrossed, and LB1097 and LB867 reported to Select File. New A bill. (Read LB209A by title for the first time.) (Legislative Journal pages 996-997.) [LR498 LB985A LB1097 LB867 LB209A]

Mr. President, the next amendment I have is Senator Flood, AM2502. (Legislative Journal page 970.) [LB968]

PRESIDENT SHEEHY: Senator Flood, you're recognized to open on AM2502 to LB968. [LB968]

SPEAKER FLOOD: Thank you, Mr. President, members. This amendment does two things. First of all, LB390, back in 2011, eliminated the Community Corrections Council and transferred Community Corrections appropriations from the Crime Commission to the Supreme Court beginning with the '11-13 budget biennium. This amendment eliminates the remaining unobligated Crime Commission Community Correction Council General Fund reappropriation of \$424,727 that was left over from the '10-11 fiscal year which has no continuing purpose. It also plugs the \$10 million that we made the decision to transfer from the Cash Reserve into the Special Education Fund Program. I would certainly welcome any input from Senator Adams on special education and exactly how that was done and would give him the balance of my time and would encourage you to vote for AM2502. [LB390 LB968]

PRESIDENT SHEEHY: Thank you, Senator Flood. Senator Adams, you're yielded 9 minutes. [LB968]

SENATOR ADAMS: Thank you. Special education is an appropriation. It is an appropriation decision. Unlike TEEOSA, we don't have to go through statutory provisions to adjust various elements of the formula. It is a decision as to whether or not you want to appropriate this money. If so, remember that we have been currently funding at slightly over \$184 million, this would add \$10 million to that, and it would be an ongoing expenditure. Make no mistake about it, it would be an ongoing expenditure of \$194 million. Now it doesn't automatically ratchet up each year. The Appropriations Committee will ultimately make a recommendation to this body and it could stay at \$194 million for another three, four, five years if we were so inclined to do that. It goes out to schools based on what we call excess allowable costs. That is, we have a pretty good idea what it costs to educate a student and then the special ed costs are over and above that. Schools will file those claims for reimbursement from the State Department of Education and they would be reimbursed from these dollars. Some of you probably have gotten e-mails from various school districts indicating that our special ed appropriation has really not kept pace with the demands in special ed. That's certainly

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hard to argue with. I think that's certainly the case and we have fallen behind. This is an opportunity to catch up with that funding. And into this next school year it has also...I see it as an opportunity to help schools a bit with some of the costs that they're going to have at the same time that we most probably are not going to be doing anything with TEEOSA during this appropriation period. That's the essence of it. Thank you, Mr. President. [LB968]

PRESIDENT SHEEHY: Thank you, Senator Flood. Thank you, Senator Adams. You've heard the opening of AM2502 to LB968. Member requesting to speak, Senator Louden. [LB968]

SENATOR LOUDEN: Thank you, Mr. President and members of the Chamber. Would Senator Adams yield for questions? [LB968]

PRESIDENT SHEEHY: Senator Adams, would you yield to Senator Louden? [LB968]

SENATOR ADAMS: Yes, I will. [LB968]

SENATOR LOUDEN: Now, at what percentage rate have they been funding special education? In other words, do these school districts, they don't get 100 percent of their cost for special ed, do they? [LB968]

SENATOR ADAMS: No, no, we are targeting right now, I think, generally on average about 50-some percent, 52 percent, 53 percent. [LB968]

SENATOR LOUDEN: And anyway, that's \$184 million or so? In other words, we're funding about half of it. You're telling me then we need another \$180 million in order to fully fund special education? [LB968]

SENATOR ADAMS: Right, we're not anywhere near 100 percent funding on it. [LB968]

SENATOR LOUDEN: Okay, now those special ed students then, they're counted in on their...on the TEEOSA funding if it's an equalized district, aren't they? [LB968]

SENATOR ADAMS: They're equalized or nonequalized. All schools run through the formula and they are part of the formula student count, yes. [LB968]

SENATOR LOUDEN: What I mean is, if it is an equalized district, then that student...part of that student...part of their expenses would be paid through the TEEOSA funding. Would that be correct? [LB968]

SENATOR ADAMS: Would you ask me that question again, Senator Louden? I didn't understand really what you were aiming for. [LB968]

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SENATOR LOUDEN: In an equalized district, and there is a special ed student, part of their funding would actually come through the TEEOSA funding because they... [LB968]

SENATOR ADAMS: Absolutely, absolutely, because what we know is that special ed funding is over and above the regular funding of that student. And that regular funding is going to run through the TEEOSA formula. [LB968]

SENATOR LOUDEN: Okay, then on the regular part. Then that \$184 million then, when you say it is over and above then on these nonequalized districts then, do they still have to pay that first cost of that...of their average cost per student in school then? [LB968]

SENATOR ADAMS: Yes. [LB968]

SENATOR LOUDEN: And then any above that is what they get for their special ed funding. [LB968]

SENATOR ADAMS: Yes. [LB968]

SENATOR LOUDEN: Yeah. Now, as we get back to this \$1 million the first year and the \$9 million the second year, I mean this is a real small increase if it can even be...I guess my question is will any districts know the difference with? [LB968]

SENATOR ADAMS: Well, that...it is split because of the way the statutory provisions are and the allowance for how much special ed can grow in a given year. That \$1 million would go out right now. [LB968]

SENATOR LOUDEN: Right. [LB968]

SENATOR ADAMS: Right now in this current school year. The \$9 million would be in the next school year. [LB968]

SENATOR LOUDEN: And the next... [LB968]

SENATOR ADAMS: So, would the \$1 million make a great deal of difference? Probably not, but under current statute, we can only allow special ed to incrementally grow so much. [LB968]

SENATOR LOUDEN: Okay. And then next year, be \$194 million. And then is that...do I understand that then once we appropriate or once we've set it up for \$194 million, then that is the number that we have to appropriate for, I guess, from then on or something like that? [LB968]

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SENATOR ADAMS: Under federal regulation, there is a maintenance of effort and once we commit...right now we're committed at a little over \$184 million. That becomes the floor. And if we want to continue to get the federal dollars for special education, we have to maintain that effort of \$184 million; we add \$10 million to it, we have a new level of effort to maintain. [LB968]

SENATOR LOUDEN: In other words, from now on till doomsday, or whenever, why, you'll be at least that level of \$194 million, unless you want to increase it in the future. But that's... [LB968]

SENATOR ADAMS: That's correct. [LB968]

SENATOR LOUDEN: That's the minimum from now on. [LB968]

SENATOR ADAMS: That's correct. [LB968]

SENATOR LOUDEN: Thank you, Senator Adams. And that's what my concern is, is...which I don't have a problem with it because it has been underfunded for a long time. Part of the problem is, is probably when I first got involved on the school board with special ed there was certain issues that you more or less had to follow. And then in later years it got to be that when we had teachers that didn't want to teach reading, why, they usually turned it over to special ed. [LB968]

PRESIDENT SHEEHY: One minute. [LB968]

SENATOR LOUDEN: And when you have these rural areas when a teacher would drive three hours to teach for a half hour, there's times that I think it needs to be looked at. But the way the amendment is, I will support the amendment. Thank you, Mr. President. [LB968]

PRESIDENT SHEEHY: Thank you, Senator Louden. Seeing no additional requests to speak, Senator Flood, you're recognized to close on AM2502. [LB968]

SPEAKER FLOOD: Thank you, Mr. President and members. Again, this moves \$424,727 from...leftover from the fiscal year '10-11 budget year and puts it in the General Fund. This is the Community Corrections Council money that is no longer needed because LB390 in 2011 disbanded the Community Corrections Council. It also takes the \$10 million into special ed as...after we took it out of the Cash Reserve. So it is a two-step amendment. I'd ask for your support. Thank you, Mr. President. [LB390 LB968]

PRESIDENT SHEEHY: Thank you, Senator Flood. You've heard the closing of AM2502 to LB968. All those in favor vote yea; opposed, nay. [LB968]

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SPEAKER FLOOD: Mr. President, I'd ask for a call of the...withdraw that. [LB968]

PRESIDENT SHEEHY: Record, Mr. Clerk. [LB968]

CLERK: 25 ayes, 1 nay on the amendment. [LB968]

PRESIDENT SHEEHY: AM2502 is adopted. Next amendment, Mr. Clerk. [LB968]

CLERK: Mr. President, Senator Ashford has AM2476. Senator, I have a note you wish to withdraw AM2476 and offer, as a substitute, AM2498. (Legislative Journal page 972.) [LB968]

SENATOR ASHFORD: That's correct, Mr. Speaker...or Mr. Clerk. [LB968]

PRESIDENT SHEEHY: Without objection, so ordered. Senator Ashford, you're recognized to open on AM2498. [LB968]

SENATOR ASHFORD: Thank you, Mr. Lieutenant Governor. This amendment deals with YRTC. It appropriates \$906,773 for fiscal year 2012-2013, and then an additional \$906,773 to the \$906,773, the same appropriation in the two years, to the Department of Health and Human Services for the renovation for the YRTC dormitories, the two dormitories located in Kearney. We have had discussions about YRTC this year and I do appreciate, as we have discussed the appropriation by the committee of funds to cover 15 additional staff members at YRTC. However, these two dorm facilities are critical to the completion of the work we are suggesting this Legislature does this year on YRTC. The dorms were built in 1953. They have not been altered since that time in any way, shape, or form really. They are 30-bed dormitories that are set out in a dormitory style without any dividers at all. There is one rest room per 30 boys. It is totally and utterly inadequate. It has been totally and utterly inadequate for a number of years. And it is becoming even more of an issue as the population at YRTC becomes...changes, is modified. And as we have suggested in further...earlier discussions about YRTC as we've seen a mixture of youth, of juveniles who come from a much more troubled environment with a violent background...background of violent behaviors, mixing that population with those who are less so, as well as mixing of ages creates, especially in the evening when the boys are relegated to their dorms, it creates a tremendous amount of tension and friction and problem. I...it would be...I can't even imagine not doing this appropriation. Without these changes at YRTC the other appropriation which I so much appreciate for the 15 new staff, though it would be helpful, would be nowhere near as helpful as it would be had...if we were to do this change. We've talked here about the issues at YRTC, the number of assaults on the juveniles upon juveniles and on staff; the increase in those assaults, and, admittedly, not all 400-and-some assaults are extremely dangerous assaults, but many of them are

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and they cause significant damage to the youth and injury to the youth and to the staff. What we're proposing to do is to divide YRTC dorms into living units of approximately 12 to 14 youth with a staff member assigned to each group so that we can monitor their behavior, not only during the day, but at night; a renovation of the rest room facilities. It will allow a private space for some of the younger juveniles who have very few places to go to away from the general population if they need to do so. My feeling is that YRTC is a critical weigh station on the way to solving problems with these 160 or so juveniles who happen to be sent to YRTC. In many cases, for example, many of the young juveniles who go to YRTC are from Douglas County, for example, are much different in the type of background they have and some of the offenses they have committed with those from out-state Nebraska. It is a challenge, a tremendous challenge to help get these juveniles back into normal life. And this YRTC facility is not helping the way it is presently constructed. It is critical element; it is with...as we talked about this morning, we talked about the probation pilot, expanding it to (inaudible) to Judicial Districts 11 and 12 in Scottsbluff and North Platte districts, a very, very important change in how we deal with juveniles as they get one-for-one mentoring from a probation officer. The hope is, as we expand the pilot, that many more of the young people that normally would go to YRTC would not go there, they would remain in their homes. And the track record in Douglas County where 87 percent of the 635 juveniles in the probation pilot are in their homes, which is the opposite or almost a direct opposite of what it was under OJS, that we will see fewer and fewer issues at YRTC. I urge and implore this Legislature to please appropriate these dollars. Let's make a YRTC at least somewhat of a livable space and help with the staff who are challenged and confronted with the issues that these youth bring to YRTC every day. And with that, I would urge the adoption of the amendment. Thank you, Mr. President. [LB968]

PRESIDENT SHEEHY: Thank you, Senator Ashford. You've heard the opening of AM2498 to LB968. Members requesting to speak: Senator Hadley, followed by Senator Heidemann, Senator Coash, and Senator Campbell. Senator Hadley. [LB968]

SENATOR HADLEY: Mr. President, members of the body, I want to thank Senator Ashford for bringing this bill. I want to thank the Judiciary Committee for making YRTC-Kearney and Geneva a high priority to try and figure out what we can do about it. Let me give you some statistics. If you're a correctional officer at the county level, there are 2.7 staff assaults per 100 inmates. At the state level there's 1.4 staff assaults per 100 inmates; at the federal level there's .9 staff assaults per 100 inmates. If you happen to be a law enforcement officer, if you're a law enforcement officer there are 10 assaults per 100 law enforcement officers in the United States. Assaults with serious injuries, there's 2.8 out of 100 that will be seriously injured. Let me tell you what happened last year at YRTC-Kearney. There were 96 assaults on 156 employees. Folks, that's 2 out of every 3 employees at YRTC were assaulted last year by the youths. Youth on youth, 472 assaults youth on youth for 449 youth that are there, 105 percent. Compare that to 2008, in 2008 there were 22 assaults; this last year there were 96 assaults. What is

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happening? Why is this occurring? If you will look at the type of youngster that is sent to Kearney, 129 last year were sent for assault; 6 were sent for sexual assault; 135 were sent for assault out 449 youths sent there. Thirty percent were sent there for assault. Why do we not expect that they will have problems of a physical nature there? As someone said, that is literally a keg of dynamite ready to go off at YRTC-Kearney. We have to do something about it. I think this is a first step. You put people into sleeping arrangements with 30 people in a dormitory-type situation with one staff member, you just can't believe the number of assaults that happen. I would hope that you would take a long hard look at this bill. This is the first step to making this happen. We are having other steps and I appreciate what the Judiciary Committee is doing to try and tackle the juvenile problem. But when they have this type of youth coming to Kearney and the assaults that they perpetrate on the staff, it is just unconscionable. We have to do something about it. This amendment by Senator Ashford is a first start. I would appreciate a green vote on AM2498. Thank you, Mr. President. [LB968]

PRESIDENT SHEEHY: Thank you, Senator Hadley. Senator Heidemann. [LB968]

SENATOR HEIDEMANN: Thank you, Mr. President and fellow members. I do rise in opposition to AM2498 to LB968. This issue was before the Appropriations Committee. We did have a good discussion on it. There is some need there. We felt like a committee though that we give them more staff, which is a total of 18, which 15 would be at Kearney, 3 at Geneva. The total cost of that in the first year, which is the current fiscal year that we're in right now, is \$225,000; in the next year of this biennial budget it's \$905,000, the thought being that this will help address some of the situation which is ongoing out at Kearney right now. I would have to think that maybe eventually we're going to have to look at this. If you look at the setup of the way it is configured out at Kearney right now it would probably be a little bit better if they eventually down the road tried to find a...to put them in smaller living quarters. And I do recognize the need, but looking at the challenges we have before us, the Appropriations Committee at this time decided not to fund this but then to give them more staff members to try to deal with the situation. So with that, if you've got any questions, I'd try to...be happy to answer that, but I rise in opposition to AM2498. Thank you. [LB968]

PRESIDENT SHEEHY: Thank you, Senator Heidemann. Senator Coash. [LB968]

SENATOR COASH: Thank you, Mr. President. Members, I'm going to...first of all, I want to thank Senator Ashford because he is trying to solve a problem here. And we have been looking at this in the Judiciary at least for the last two years. But what I'm going to do is I'm going to try to pull myself up. And as Senator Harms would tell us, we need to have a plan here. First of all, I've been to Kearney; I've spent time there; I've worked with the children who have gone there, who have come back from there, and I will tell you that the physical plant of that place is not conducive to good treatment. There's no question there. It was built in a time when we thought we knew how best to treat

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children and the science has changed and the physical structure did not catch up with that science on how best to serve children. It's a factor in the assaults, as Senator Hadley has pointed out. And it is not a factor, and I want to make this clear, colleagues, the people who work in Kearney work hard, they care about those kids. They want to see those children successful and they need our help to do it. And I think it was Senator Hadley, he said this is a good first step. And what I would say is the Appropriations Committee came out with a first step and they increased some staffing. And Senator Ashford and Senator Heidemann didn't get specific, but I will. The staffing that they came up with was treatment staff, security and management staff. That is a first step. In addition to that, in the Judiciary Committee we've been working on how to help YRTC partner with Bob Houston and the Corrections Department to find better ways to manage the children safely based on their experience and expertise. Colleagues, I have to be honest with you, I'm not sure that there is a long-term state need for Kearney YRTC. And before everything starts flying, I want you to understand something. We need the people who provide those services and we need the services that are provided. But we have got to take a long-term view of how we provide services to kids. We need services closer to their homes. The children who are at Kearney are not all from the Kearney area; most of them are not. The children who are at Kearney are from Omaha. We need the services in Omaha; we need the services in Lincoln. And we need the services closer to their homes; and we need the services in their homes whenever we can. We have got it backwards, colleagues. We have for years decided that the best thing a kid can do is be outside of the home, and for some kids that's appropriate, but we've swung that pendulum way too far. We need services for kids; we need the people, the good people at the Kearney YRTC who are providing it. But long term, colleagues, and I know Senator Campbell and her committee is working on a long-term vision for how services for children are provided. There may be a place for Kearney YRTC long term. We may need to take the funding, the good people who provide the services, and provide it in a different way. And while renovating YRTC may be a good short term, I am afraid of this. I'm afraid that Senator Campbell's committee is going to come to us in two years and say, you know what, we rethought... [LB968]

PRESIDENT SHEEHY: One minute. [LB968]

SENATOR COASH: ...the way we need services for kids and we've got a better way, based on science, of how to serve these kids and the Kearney YRTC is no longer needed. Let me give you an analogy. BSDC has a lot of unused buildings and capacity because the science in how we serve people with disabilities has changed. And so what I'm going to ask you to do is consider that. And I would ask members of the HHS Committee to get up and talk about the long-term planning for children placed out of home and help us understand how this might fit into that because this is a lot of money. We do have a first step happening and that is Senator Heidemann's, as he mentioned the additional funding for staffing, that is a good first step. I'm not saying we don't need to renovate YRTC; I'm saying I want to know how that fits in the greater plan of serving

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children. [LB968]

PRESIDENT SHEEHY: Time, Senator. [LB968]

SENATOR COASH: Thank you, Mr. President. [LB968]

PRESIDENT SHEEHY: Thank you, Senator Coash. Senator Campbell. [LB968]

SENATOR CAMPBELL: Thank you, Mr. President. Colleagues, I would stand in support of Senator Ashford's amendment. This summer the Judiciary Committee was kind enough, and I think Senator Ashford was probably at the head of this, but...invited the Health Committee members who could attend to sit in on several hearings that they were having. And one of the issues that they discussed was YRTC at Kearney. And I thought it was a most informative afternoon, particularly because the Health and Human Services Committee has not, necessarily, dealt with the juvenile justice system. We have been far more centered in LR37 and the child welfare system, those children who have been abused and neglected. And it was fascinating to listen to the recommendations and the discussion that afternoon because not only did we hear that they needed additional staff members, and the Appropriations Committee responded to that, but it was also clear that some of the incidents that Senator Hadley is talking about had to do with the configuration of that facility. Now I do understand Senator Coash's concern about how this all fits in. The Children's Commission's number one duty to start with is to come up with a strategic plan for the child welfare system. Now will they discuss how juvenile justice interacts with that or crosses? Yes, they will. But I have to feel that what Senator Ashford is trying to do here is to not only put the staff in place but to make some renovations that would cut down on the tremendous number of assaults that Senator Hadley has discussed. Colleagues, I would support this amendment because I think that we need a two-pronged approach at Kearney. We not only need the staff, but we need to renovate that facility. Thank you, Mr. President. [LB968 LR37]

PRESIDENT SHEEHY: Thank you, Senator Campbell. Members requesting to speak on AM2498 to LB968, we have Senator Carlson, followed by Senator Howard, and Senator Krist. Senator Carlson. [LB968]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. I'd like to ask Senator Heidemann a couple of questions, if he would yield. [LB968]

PRESIDENT SHEEHY: Senator Heidemann, would you yield to Senator Carlson? [LB968]

SENATOR HEIDEMANN: Yes. [LB968]

SENATOR CARLSON: Senator Heidemann, in the budget you've got 15 positions

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allocated for Kearney and 3 for Geneva. Is this correct? [LB968]

SENATOR HEIDEMANN: Yes. [LB968]

SENATOR CARLSON: And again, Senator Hadley indicated, but do you know what the number of staff is at Kearney right now? [LB968]

SENATOR HEIDEMANN: I would have to get those numbers for you. [LB968]

SENATOR CARLSON: Okay. [LB968]

SENATOR HEIDEMANN: The only thing that I've been told is since the staff has been in that the actual assaults have gone down. [LB968]

SENATOR CARLSON: You mean that staff...this staff is already there? [LB968]

SENATOR HEIDEMANN: We're just adding staff. I'm corrected on that. [LB968]

SENATOR CARLSON: Okay. So these will be additional, 15 additional staff members for Kearney. [LB968]

SENATOR HEIDEMANN: Yes. [LB968]

SENATOR CARLSON: Okay. Thank you, Senator Heidemann. I'm going to disagree with something that Senator Coash has said because I don't think the location of a facility is important, it's the effectiveness of the facility, not where it is located. I think that Kearney can be a very, very good place for the YRTC. I'd like to address a couple of questions to Senator Hadley, if he would yield. [LB968]

SENATOR GLOOR PRESIDING [LB968]

SENATOR GLOOR: Senator Hadley, would you yield? [LB968]

SENATOR HADLEY: Yes, I would. [LB968]

SENATOR CARLSON: Senator Hadley, I haven't talked to you on the side about this and maybe should have, but I think of YRTC and it's almost bordering on part of what is my district now, so we both got a keen interest in what happens there. And you and I come from communities that are very, very giving in terms of being willing to see that facilities are built when they are necessary and so the community is taken care of. I think both you and I believe that the location of YRTC is fine now and probably fine in the future. Would you agree? [LB968]

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SENATOR HADLEY: Absolutely, I think...I don't see any problems whatsoever with the location. [LB968]

SENATOR CARLSON: Well, this is about a \$1.8 million request on this amendment. I appreciate Senator Ashford bringing it because I believe that it is...there is a real need there. And having not talked to you on the side, what do you think the possibilities are for some local money going into a project like this? [LB968]

SENATOR HADLEY: I wouldn't say that it would be real high, Senator Carlson, because I would say that we look at the justice system and I think most people would say that that is a governmental responsibility. [LB968]

SENATOR CARLSON: Is YRTC a benefit to the Kearney community financially? [LB968]

SENATOR HADLEY: It has 170...oh, what, about 156 employees, yes, from the standpoint that, yes, it does have employees. [LB968]

SENATOR CARLSON: And I think that there would be employees there from west of Kearney as well as Kearney itself and all four directions. [LB968]

SENATOR HADLEY: Absolutely. [LB968]

SENATOR CARLSON: Well, we may want to talk about this a little bit. I think that there could be a possibility that we have some local participation. And sometimes when that happens there is more pride taken in a facility as well. I'm not standing up to oppose AM2498, but it is an additional \$1.8 million that is difficult to come by at this time. So I'll continue to listen to debate, see what people think and go from there. Thank you, Mr. President. [LB968]

SENATOR GLOOR: Thank you, Senator Carlson and Senator Hadley. Senator Howard, you are recognized. [LB968]

SENATOR HOWARD: Thank you, Mr. President, members of the body. While I appreciate an additional 15 staff, you know, I look at it from the viewpoint of someone that's been there and done direct services. And, quite frankly, if you were a staff member and you're getting assaulted, how long are you going to continue working on that job? I, for one, wouldn't want to put myself in that position. So you can allocate additional numbers of staff, but if the staff are leaving, if there is a high staff turnover, I don't know how you're ever going to have an adequate number of staff to safeguard the people and the youth can be safe in that facility. It just doesn't make sense. I've had a bill in Judiciary Committee now for two years trying to get it out on the floor regarding safety measures for child protective service workers, health and human services

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workers, because there is no...there should be...there should be no tolerance for physical violence toward anyone who is trying to do this type of work. I talked to Senator Hadley for a moment off the mike and asked him if he had any idea regarding the staff turnover and the assaults...how long...in light of the assaults, how long a staff member, generally, is able to remain on the job. And I'm going to ask him, if he wouldn't mind yielding to a question, if he could answer that. [LB968]

SENATOR HADLEY: Yes, I would. [LB968]

SENATOR HOWARD: Senator Hadley, just to review, the staff out there--I looked at these figures and it's just appalling to me--from 2010 to 2011 the staff assaults, youth-on-staff assaults increased by three times as much. It went from 34 incidents, and those are recorded incidents, to 96. And if you've got any thoughts on worker turnover or how this affects the morale of the employees or what is actually happening with the staff, I'd really be interested in hearing that. [LB968]

SENATOR HADLEY: Thank you, Senator Howard. I don't have actual data, but I have spent...I've had at least five meetings with the staff at YRTC where I got together with a group of them to talk about...that's how I got interested in this problem. And there is a severe morale problem because any time you go from 34 assaults to 96 assaults it is a problem. And just anecdotally, I had a young lady who was working at the Kearney Public Library stop me and thank me for getting involved in this because she said her husband had just resigned with two...because he had had two ribs broken in an assault on him. And so I think what's happening, as people retire it's going to be harder to replace them with people with the commitment that they need to have there. So I think it's going to be more of a problem, the turnover, as we go along. [LB968]

SENATOR HOWARD: I would certainly agree with you with that. And I would say in addition that these assaults shouldn't be just taken lightly; I'm sure they're just not a slap. I'm sure it's much more confrontive than that. These youth at this facility, many of them feel they don't have anything to lose; they've already been sentenced here. They're going to do their time; they're going to get out. What more is someone going to charge them with? I, myself, had had one youth that threatened me and I asked the county attorney at that time to file charges on him because I don't take this sort of thing lightly. And this boy was...this was dealt with in juvenile court and this particular youth went on...later on to kill another youth over a coat. So these things are not minor incidents. They're not simple things. These are very vicious attacks. And the youth-on-youth assaults I would even be afraid to ask what that would involve, because with many of these...many of these youth there is a lot of sexual violence and a lot of sexual abuse and abusive situations in their own lives that they've come from. [LB968]

SENATOR GLOOR: One minute. [LB968]

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SENATOR HOWARD: And I am supportive of this effort to make this facility a facility that actually is conducive to assisting the youth and not someplace where they're going to just put in their time until they're released and vent whatever feelings they have on either other youth or the staff at that facility. Thank you. [LB968]

SENATOR GLOOR: Thank you, Senator Howard. Senators in the queue: Krist, Dubas, Ashford, and Hadley. Senator Krist, you're recognized. [LB968]

SENATOR KRIST: Thank you, Mr. President. Good afternoon, Nebraska and colleagues. And I rise in support of AM2498 and I was privileged to be a member of that joint hearing and hear firsthand those issues that were brought up regarding YRTC. What I took away from that conversation was when this facility was built, initially designed in the early '50s, the only gang that most people heard about was Spanky and his gang. Since then our culture has changed and the dynamics have changed incredibly. We heard that it was almost impossible to break up an altercation between two of the young folks that were there and to keep them separate because of the construction of the facility. Now I want you to try to visualize that, and many of you I know have been through boot camp and you know what a 30-bay open bay barracks is. When I was there we all were motivated to behave ourselves. We were there for a common goal. We were there to graduate and become members of the Armed Forces. These are young folks who are there for a myriad of different reasons and they are sleeping head to head or next to a person that also has issues. In some cases, three or four or five of them are connected through gang relations. How do you rehabilitate? And in effect--correct me if I am wrong, Senator Ashford or anybody who has been in this business or Senator Howard--but the whole reason these folks are there is not incarceration; it is rehabilitation. It's a lot of money, there's no question about it. It's money though that I think that needs to be spent if we're truly going to put these young folks in a position to be rehabilitated and if we're going to keep the staff safe in the efforts of rehabilitation. It's a step in the right direction. I occasionally, back here with my fellow orange tie-wearer, share a quote of the day, but I think it is appropriate with all the things we have done today and especially now, it is someone that we all, I think, respect very much, Abraham Lincoln: "The legitimate object of a government is to do for a community of people whatever they need to have done, but cannot do at all or cannot so well do for themselves in their separate and individual capacities." This is fundamentally our children, again. Kearney can't shoulder this burden on their own. It may be conveniently and properly located in this part of the state, as the Douglas County correction facility is conveniently and probably located in the city of the municipal class, that would be Omaha, but they can't do this on their own. And I think it's up to us to make sure that that facility is properly configured and properly staffed. I ask for your support on AM2498. And thank you, Senator Ashford, for bringing it forward. [LB968]

SENATOR GLOOR: Thank you, Senator Krist. Senator Dubas, you are recognized.

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[LB968]

SENATOR DUBAS: Thank you, Mr. President. Is Senator Ashford available for questions? [LB968]

SENATOR GLOOR: Senator Ashford, would you yield? [LB968]

SENATOR ASHFORD: Yes. [LB968]

SENATOR DUBAS: Thank you so much, Senator Ashford. And I am absolutely not going to dispute anything that's been said on the floor so far about the very, very real problems at YRTC. In fact, I've said I think that's our next emergency. It's our next state crisis, so we need to do something. But where I am stuck is, do you know, are there young people that are being sent to YRTC that really shouldn't be there? Do we have violent, very violent people being put with nonviolent? I mean, it's very clear we don't have enough community-based services to help all of these children. And so, you know, I would understand by making these improvements in the residence halls we might be able to alleviate some of these problems. But I guess again back to the question, are there kids there that probably really shouldn't be there? [LB968]

SENATOR ASHFORD: There are numbers of youth there who, primarily coming from rural Nebraska, who have not committed significant offenses, if you'd call it that, where there is some sort of violence or a pattern of violent behaviors. It's primarily the result of the lack of resources in rural Nebraska. There are, from Douglas County and other urban areas, a more difficult cohort of juveniles that are sent there. There are 40 percent of the juveniles are gang members. That was not the case 10 or 15 years ago. In 1999 was the first recommendation by HHS to renovate or change Kearney, either rebuild or renovate. That was 1999. That's 13 years ago. It's the same...and the pattern started to evolve then, and now we're seeing the result of that. [LB968]

SENATOR DUBAS: So I know we have this plan, and I haven't had a chance to really look through that report that you distributed, but it looks to me like the focus is definitely on the infrastructure, the buildings, the facilities. [LB968]

SENATOR ASHFORD: Right. [LB968]

SENATOR DUBAS: And I don't know if I'm articulating my question the way I really want it to. Is it the facilities that we need to renovate or is it the mission of the service needs of the facility that we need to...so, you know... [LB968]

SENATOR ASHFORD: Actually I think we have...we're in the process of changing and have changed to a certain degree the mission, and to a, for lack of a better term, a more diagnostic and behavioral development developmental process. But in order to do that

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effectively, we need to have space within the facilities in order to meet with youth in private or in small groups. Those don't exist. And so I think it's a matter of following the mission statement of 1999 where OJS said we need to...or HHS at that time said, you know, we need to move forward with renovation or rebuilding of Kearney to meet those new kinds of treatment initiatives. That never happened. [LB968]

SENATOR DUBAS: Again, I really see where you're going. I guess I'm feeling just a little bit gun-shy over what happened with child welfare reform. We didn't move forward with a very well-thought-out, organized plan. [LB968]

SENATOR GLOOR: One minute. [LB968]

SENATOR DUBAS: We started running into problems immediately, so we started throwing money at it and then we ended up really where we're at today with what we're trying to do with reforming child welfare reform. I think I'm along the same lines as Senator Coash, as I understand what these problems are. I'm just confused I guess as to if this is the best way to put our money, if this is where...it probably kind of is a chicken-and-egg question. You know, which comes first? Do we need the facility to build the...to fulfill the mission or do we need to go a different direction? So I will continue to listen and I do appreciate the work that you've done on this, Senator Ashford. [LB968]

SENATOR GLOOR: Thank you, Senator Dubas and Senator Ashford. And, Senator Ashford, you are next in the queue. [LB968]

SENATOR ASHFORD: Thank you. And I believe there's an amendment that we're drafting that will change the funding source for this project from the General Fund to the cash fund, the Capital Construction Cash Fund, so that there will be no General Fund impact. But Senator Dubas has asked the correct question, and the...what we're...what we have found over the last couple of years as we've gotten into juvenile justice is that you...in a big way in this body, is you cannot, in my view, separate out juvenile justice, health and human services or, for that matter, education. These three vast areas of state government deal with 16,000 or 17,000 youth every year. Of those youth, about 2,300 are adjudicated as delinquents, meaning that the juvenile court has found some law violation. And those law violations can extend every...from, you know, a status offense, excessive absenteeism--somebody just simply won't go to school, to a situation where there's been some sort of an assault. And what we are I think striving to do in this body, and I believe we have done to a great extent, moved the ball forward considerably in the last couple of years, is recognizing that it is a continuum here that we're dealing with; that to separate out treatments or assessments or whatever and move forward in a sort of siloed kind of approach is not in the best interest of young people. So in the case of YRTC, we do have to deal with what is clearly the case, and that's what Senator Dubas is asking about and that is the inputs. These children that are coming in there are

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from all different backgrounds, and we're mixing populations, no question. And we do have to fix that. And I do think that Senator Campbell is correct in saying that that is a primary role and mission of the commission and the other efforts. But there are...there is a need to address, and right today, not waiting two years or three year or five years, because we're going to continue to lose juveniles if we wait. We're going to continue to lose juveniles if we wait. What the average length of stay at YRTC is only five months. They are not being incarcerated at YRTC. They are going to YRTC because it's a treatment facility. And we are hopeful that with the new staff, many of whom are going to engage directly in treatment, that as long as we can provide the physical plant to allow the young people, the juveniles, to feel comfortable in the setting they're in, that we can within five months or six months, because our capacity is only 160...and it's not as if new juveniles are not coming into the system. So we have to work fast, and that means we have to be effective and we have to be productive, and we can't have assaults every day, as Senator Howard so rightly suggests. How can we ask staff out there to, quite frankly, perform miracles with these young people in five or six months if they are constantly dealing with assaults on the premises? This is the one facility we have, short of the correctional system,... [LB968]

SENATOR GLOOR: One minute. [LB968]

SENATOR ASHFORD: ...the one facility we have in the state, only one for boys and one for girls, to deal with the issue of concentrated, focused treatment. There is no other place that the state owns or operates. It cannot be a facility that was built in 1953 and that has never been renovated. That cannot be. They don't even have air conditioning and heating that works out there. And they have one bathroom per floor for 30 boys. That's nuts. Back in 1999, the first proposal to renovate or rebuild, at a cost of \$7.9 million to rebuild Kearney in 2007 versus renovation of \$1.8 million, was prepared by the Department of Health and Humans Services... [LB968]

SENATOR GLOOR: Time, Senator. [LB968]

SENATOR ASHFORD: ...and OJS in 2007. [LB968]

SENATOR GLOOR: Time, Senator. Thank you, Senator Ashford. Senator Hadley, you are recognized. [LB968]

SENATOR HADLEY: Mr. President, members of the body, let me give you some background. I first started looking into this last year, and one of the things I found out that was interesting is that the term "sentence" is not correct. I believe it's they're remanded to this YRTC. And they are treated differently than we treat people who are sentenced to the correctional facilities. And one of the biggest difference, if you look at our statutes, is that a person who is sentenced to a correctional institution, if they're convicted of a third-degree misdemeanor assault upon a correctional officer, that is

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considered a felony. That is the only place that I know of in statute where a third-degree assault is not a misdemeanor. If you're at the state penitentiary and you assault a correctional officer, and it's a third-degree assault and you're convicted, it's a felony. So what we have at YRTC is that we have the youth, and they're figuring the game out. They know that a third-degree assault out there, which can be pretty significant, is considered a misdemeanor. Since they're a juvenile anyway, it means that they basically are not charged with anything. They're sent back to YRTC. So the same staff that they assaulted are there, and they're back. And I realize--I've had a lot of discussions with the Judiciary Committee--you hate to hang, quote, a felony on a young man. But you know, the day that Senator Ashford and I were there a young man took a two-way radio away from one of the staff and hit him over the head five times with it while we were there. They have pictures of some of the assaults on the staff. You know, these aren't nice, little, young men. Some of them are pretty hardened youth. In talking to the director out there who is doing an outstanding job, she made the comment to me. She talked about the 80/20 rule. She felt 80 percent of the youth that were sent to YRTC they could really help; 20 percent are the ones that they have problems with, and they don't have a lot that they can do with the 20 percent. And having these open dorms doesn't lend itself to working with that 20 percent. I would say getting the additional staff is great, but that would be like the city of Lincoln saying we're having a problem so we're going to hire 15 new law officers but we can't afford any more cruisers. If you don't do both, I don't know how you're going to solve the problem, because you need the facilities that lend themselves to the type of work that the staff is going to be doing. And I just think this is just too important. I will tell you that in my five meetings with the staff, they are very, very concerned, as well I would expect them to be. It is like if we're going to work in here, would you be worried if two out of three of us were assaulted every year in the Chamber? Would we do something about that, do you think? Do you think we might have more officers if two out of three of us were assaulted every year in the Chamber? [LB968]

SENATOR GLOOR: One minute. [LB968]

SENATOR HADLEY: I would guess that we would probably get pretty uptight about that. Yet these are state employees that we're putting...I read you statistics of what a correctional officer, the percentage of them getting assaulted, and it's six times as high at YRTC as it is for a correctional officer. I think we need a two-pronged approach. I think the staff helps. I think the facilities will help. I understand they are trying to work this out. I hope they can, because we need to do something. We need to send these dedicated staff, we need to send them that lifeline that will keep them working out there, keep them involved in trying to help these youth, because the 80 percent they can make a difference in are very, very important. Thank you, Mr. President. [LB968]

SENATOR GLOOR: Thank you, Senator Hadley. Senators remaining in the queue: Coash and Nelson. Senator Coash, you're recognized. [LB968]

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SENATOR COASH: Thank you, Mr. President. I want to respond to a couple of comments since I last spoke. First of all, colleagues, the Y and the R and the T stands for youth treatment center. The children who are there are there because they need treatment. They are not sentenced there by a judge. No one says you will go to Kearney and you will spend 60 days. This is not a correctional facility. The children who go there need treatment. Many of those children are there because of the lack of resources in rural Nebraska. There simply isn't the options west of Lincoln in places that provide treatment to children, so they don't have a lot of choice. Senator Dubas, I think, asked earlier, are there inappropriate referrals? Yes, there are. There are children who are there who shouldn't be there. And here's what happens. You might have a 13-year-old there who is legitimately there for treatment. He's stuck there with an 18-year-old who is just about ready to age out of the system and doesn't have a whole lot to lose. Those two populations don't mix well for each other, and it's certainly not in the 13-year-old's best interest. Kearney YRTC, by no fault of their own, has become a last resort, the last option for the judicial system. It's become the last option for HHS. And that's how we got ourselves in part of the mess that we've got there. This is a lot of money that Senator Ashford is proposing in this amendment, and I would ask my colleagues to consider this: Is this the best bang for our buck, and is this the right time? Let me address the time for a moment. We are appropriating money for more personnel at Kearney. That is more bodies. They need help. They've been running the tightest ship that they can, and the results speak for themselves. They've got a lot of assaults. So the Appropriations Committee has said, look, we're going to give you some more money and we want you to hire some more people; we want you to try to use those people to make life better for the kids who are there; see if that doesn't start to decrease the assaults. I wish we had a crystal ball, colleagues, because if we had a crystal ball we could look into it and say what's YRTC...what...how is it going to fit in the grand scheme of things in ten years. Because if we would have had that crystal ball, and I'm going to use a couple of examples, if we had had that crystal ball in the early '80s for BSDC, we would have made different decisions then. If we would have had that crystal ball for the regional center in Norfolk, if we would have known 20 years ago how Norfolk Regional Center was going to be utilized and it was going to become the central place for treating sex offenders, we would have made different decisions then. And what we have...Hastings is another example. We've got the Hastings Regional Center. Hastings Regional Center is sitting with a lot of vacant buildings, because over time we found different ways to serve people within... [LB968]

SENATOR GLOOR: One minute. [LB968]

SENATOR COASH: ...that needed that type of service. And so I know we don't have a crystal ball, colleagues, but we have to be mindful. If we're going to spend this money, we might be here in ten years and say, boy, that was a good check we wrote; I wish we could find a new way to use the facilities at Kearney. They would...I want to be honest,

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they would benefit there from some renovations, but they will benefit from the already appropriated staff. If we knew what we were going...if we knew what we were going to use Kearney for in ten years, it would make it a lot easier to vote for this amendment. But this building is old, colleagues, and we might find a better bang for our buck of this \$2 million in providing some better community-based services. We could serve a lot more kids in the community... [LB968]

SENATOR GLOOR: Time, Senator. [LB968]

SENATOR COASH: ...than we can in an institution. Thank you, Mr. President. [LB968]

SENATOR GLOOR Thank you, Senator Coash. The Chair recognizes Senator Nelson. [LB968]

SENATOR NELSON: Thank you, Mr. President, members of the body. I rise I think not in support of this amendment and I do have, though, some questions of Senator Ashford if he will yield. [LB968]

SENATOR GLOOR: Senator Ashford, would you yield? [LB968]

SENATOR ASHFORD: Yes. [LB968]

SENATOR NELSON: Thank you, Senator Ashford. You have distributed several pages here showing the study for the dormitory remodel study. [LB968]

SENATOR ASHFORD: Um-hum. [LB968]

SENATOR NELSON: Is that...do you have that in front of you? [LB968]

SENATOR ASHFORD: Yes, somewhere. [LB968]

SENATOR NELSON: Okay. I will be referring to that just to get some things in the record here. On the face there it shows the existing open dormitories. That's correct? [LB968]

SENATOR ASHFORD: Yes. [LB968]

SENATOR NELSON: All right. And then on pages...or on the back page of the first page and the second page it shows the changes that are being proposed. And when we refer to the Creighton Living Unit and the Bryant Living Unit,... [LB968]

SENATOR ASHFORD: Uh-huh. [LB968]

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SENATOR NELSON: ...that's just one of two units, is that right? There are four units altogether, I guess? [LB968]

SENATOR ASHFORD: There are two buildings and four units. [LB968]

SENATOR NELSON: Two buildings. Then on the second floor of each building, is that what we're renovating? [LB968]

SENATOR ASHFORD: It's...yes. [LB968]

SENATOR NELSON: Yeah. So it's not that it's like \$1.8 million here for just this one unit. It's actually half of that, and it appears that that would be done in the first year and then Lincoln and Washington would be done in the second year. [LB968]

SENATOR ASHFORD: Correct. [LB968]

SENATOR NELSON: All right. So in looking at the diagram, basically it appears that we're taking one long floor and we're dividing into four separate units which can be closed off, each with about seven beds in each place. Would that be correct? [LB968]

SENATOR ASHFORD: Correct. [LB968]

SENATOR NELSON: All right. And we're adding two bathrooms, each with one facility, and we're also putting some passageways in so that those in two of the units of seven persons each can access the fire exit. [LB968]

SENATOR ASHFORD: Correct. [LB968]

SENATOR NELSON: So we've got some partitions there and we've got a partition running down through the middle, and I'm just questioning why...and I've looked at the proposal here, why we're talking about basically, what is it, \$1.2 million? That's \$900,000 for each of these units. [LB968]

SENATOR ASHFORD: Correct. [LB968]

SENATOR NELSON: That seems like a lot of money for what we're doing there. And I'm not questioning the need for this, and I'm confident, as you are, that probably subdividing them into lower, smaller units will help as far with the confinement of keeping certain persons, kids, away from each other. Would that be part of the project? [LB968]

SENATOR ASHFORD: That's correct. [LB968]

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SENATOR NELSON: Okay. Half of the four subdivisions there, almost half of the space, are allocated to a meeting room in each one of those, and lounge chairs and things of that sort. Could you explain what the thinking is there? [LB968]

SENATOR ASHFORD: The...starting in 1999, HHS developed a master plan for its services and in 2007 it was updated, and the updates resulted in this physical plan in 2008. And then it was revised again I believe in 2010. But the idea...going back several years, HHS and then OJS made the determination that in order to meet the obligations of its mission that it needed to change the configuration of YRTC into smaller units so that there would be space for a couple of things. One is for these rehabilitative services... [LB968]

SENATOR GLOOR: One minute. [LB968]

SENATOR ASHFORD: ...to be provided in a small group setting, in a living unit similar to a college dorm type of setting, as opposed...because there was no other place. I mean you can go to the lunchroom and that sort of thing, but there's no privacy. So that was the rationale. It also provided for some of the younger children the opportunity to go somewhere that was a little more private and safer for them to be by themselves or with kids their own age. There just isn't that ability to do that as it's configured now. [LB968]

SENATOR NELSON: All right. All right, thank you. I noticed on the impact of the proposed project here, additional equipment: all new heating, ventilating, and air-conditioning equipment is included. The allowance of \$88,000 is included for each renovated building. So we're talking about \$175,000 altogether for heating, ventilating, and air conditioning new. [LB968]

SENATOR GLOOR: Time, Senator Nelson. [LB968]

SENATOR NELSON: Thank you, Mr. President. [LB968]

SENATOR GLOOR: Thank you, Senator Nelson and Senator Ashford. The Chair recognizes Senator Hadley. And, Senator Hadley, this is your third time. [LB968]

SENATOR HADLEY: Thank you, Mr. President. I just want to quickly, Senator Howard asked about the turnover, and I did get some statistics. In the youth security specialist, this is not the teachers but the security specialists, at Geneva it's 22.9 percent per year. At Kearney it is almost 30 percent. So out of every ten employees, three of them turn over every year. The total is 27 percent when you take the two facilities. And as you well know, when there's turnover, there's high costs involved with turnover. So Senator Howard is exactly right in the turnover among staff. Thank you, Mr. President. [LB968]

SENATOR GLOOR: Thank you, Senator Hadley. Senator Council, you're recognized.

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[LB968]

SENATOR COUNCIL: Yes, thank you, Mr. President. I rise in support of AM2498, and you've heard a lot of the discussion about the amount of time and energy that has been devoted to addressing the issues at YRTC. Senator Hadley has been advancing the proposition to come up with a solution that would serve the mission of YRTC while also providing for the security needs of the staff. Now when you look at the project, their dormitory remodel study, it's interesting during the hearing it was noted that YRTC is an accredited institution. But during the last accreditation review there was concern expressed about the way that the living units are constructed. And to have this open dormitory concept, the accreditation committee clearly was recommending that that be changed and provided a reaccreditation report that indicated that it accepted the proposal that is reflected in this study to redesign these existing units. And when we talk about what's occurring or what these open, large dormitories actually facilitate is the kind of combative behavior that these youngsters evidence over the course of time. Now Senator Nelson just asked some questions about the cost that's reflected in the study and the cost that is reflected in AM2498, and we most assuredly should be concerned about costs. But we also need to recognize what our options are, because the options presented to the accreditation committee was build a new facility or remodel the one that exists. And it was considered to be more cost-efficient to remodel the existing facility. Senator Nelson just referenced the HVAC. Yeah, I don't know how you all would react over a course of time when you're in a facility where I'm sure none of these kids want to be, and current...if Senator Ashford would yield to a question?
[LB968]

SENATOR GLOOR: Would you yield, Senator Ashford? [LB968]

SENATOR ASHFORD: Yes. [LB968]

SENATOR COUNCIL: Senator Ashford, am I correct in my understanding that currently the air-conditioning units at the YRTC are inoperable? [LB968]

SENATOR ASHFORD: They're...yes. [LB968]

SENATOR COUNCIL: So we're talking about housing these young men in one large open dormitory and during the hottest months of the year they are without any air conditioning. It's the staff as well. You know, that is bordering on intolerable. So if you look at that cost, and I think it's in the area, according to the budget summary, just that HVAC costs alone is close to \$200,000; something that even if you don't advance AM2498, we as a state responsible for these young people and the staff at YRTC must do. [LB968]

SENATOR GLOOR: One minute. [LB968]

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SENATOR COUNCIL: Now you question the costs. I don't know how many of you have been in situations where you've had to remodel old facilities. This building is over 60 years old, and you're talking about going in and undertaking a major remodeling. I suspect that \$805,000 per unit is probably an appropriate and reasonable cost for the work that's scheduled to occur. If you look at the fact that there's, you know, one bathroom, and we're not (laugh)...we're not talking about a gymnasium style bathroom, a bathroom the size of bathrooms you see in our high school locker rooms. We're talking about a small bathroom that's supposed to serve 30 young men. These remodelings need to occur. It is a... [LB968]

SENATOR GLOOR: Time, Senator. [LB968]

SENATOR COUNCIL: Thank you. [LB968]

SENATOR GLOOR: Thank you, Senator Council. Seeing no additional senators wishing to speak, Senator Ashford, you're recognized to close on your amendment. [LB968]

SENATOR ASHFORD: Thank you, Mr. President. This is not a new request or a new idea, and it's certainly not my idea. First of all, I do understand Senator Coash's comments. I agree with him that what we are uncovering here, statewide, is a significant lack of community-based services for troubled youth. I mean we all know that and we continue to say it and we're doing something about it. But again, whereas many states have regional, staff-secure, in many cases, or non-staff-secure, as the need dictates, facilities, treatment facilities for youth, we have one. The one we have was constructed and built in 1953. We have had a programmatic shift at OJS, HHS/OJS that occurred over the last eight to ten years. And at the...and when that programmatic shift occurred, the need to renovate or change, make more usable, YRTC was made very, very clear. As late as just two years ago, it was reemphasized in the plan that you have in front of you, which is a \$1.8 million renovation. It is entirely consistent with the programmatic planning that's being done at HHS/OJS for these troubled youth. It allows the facility to operate with a mixed population. We aren't going to change that tomorrow or in two years or three years. Senator Coash has been a reliable and tenacious advocate for community-based services. And if Senator Coash could wave a magic wand, I'd wave it with him so that we could provide the adequate services. And the probation pilot that we are moving forward with, and thank goodness we're moving it into Scottsbluff, the 12th Judicial District, and we're moving it into the 11th Judicial District in North Platte. But this is a gap, members, in my view. It is a significant gap that we can address. It may be in ten years that we dramatically shift away from YRTC, but in the process...or five years even, but in the process, we have children there now, and they are children. The average age is 14 and 15. Their average stay is five months. At least in our county, many of these children come back into Douglas County, they're on the street and they're back in some other facility or back into juvenile court. We need to provide them

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with the staff which the Appropriations Committee has, I applaud them for doing, has provided to us in the budget. But this is something that with all the capital construction we're doing and all the buildings I see being built around Lincoln and around Omaha that are wonderful buildings and that are going to enhance the quality of life in our state, this is a little place in Kearney, Nebraska, that deals with the most vulnerable population of our state--one of the most vulnerable populations of our state. It is central, it is key to the reform of juvenile justice. It is central and it is key to the reform of public welfare. We have many children that are crossover kids who are both in the public welfare system and in the juvenile justice system. We're doing great work here, members, and I applaud everyone for the work they are doing on, and especially the HHS Committee and our committee, the Judiciary Committee, have spent hours and days on these issues. [LB968]

SENATOR GLOOR: One minute. [LB968]

SENATOR ASHFORD: And Senator Hadley has been a real yeoman behind this effort. He is there every day. He talks to people on a recurrent basis. He understands the problems. He's identified them to you. This is an appropriate appropriation in my view and I would recommend to the body that we adopt AM2498 and help these kids and meet their needs as was envisioned as far back as 1999. Thank you. I'd ask for a call of the house if I could. We can just do a machine vote. [LB968]

SENATOR GLOOR: There has been a request for a call of the house. The question is, shall the house go under call? All in favor vote yea; all opposed vote nay. Record, Mr. Clerk. [LB968]

CLERK: 32 ayes, 0 nays to place the house under call. [LB968]

SENATOR GLOOR: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senators Mello, Conrad, Wightman, Nordquist, Lathrop, Dubas, Cornett, Lautenbaugh, Pahls, please return to the Chamber and record your presence. Senators Mello, Wightman, and Cornett, please return to the Chamber. [LB968]

SENATOR ASHFORD: We can go ahead, Mr. President, with a machine vote if... [LB968]

SENATOR GLOOR: Thank you, Senator Ashford. The question is, shall the amendment to LB968 be adopted? Those in favor vote yea; those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB968]

CLERK: 20 ayes, 20 nays, Mr. President, on the amendment. [LB968]

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SENATOR GLOOR: The amendment fails. Mr. Clerk. Raise the call. [LB968]

CLERK: Mr. President, Senator Heidemann, AM2449. (Legislative Journal page 950.) [LB968]

SENATOR GLOOR: Senator Heidemann, you are recognized to open on AM2449. [LB968]

SENATOR HEIDEMANN: Thank you, Mr. President. Fellow members of the body, this is pretty much a cleanup amendment, which we usually always do on Select File. Each statement to the amendment introduces a purpose statement where the amendment follows. These notes expand or restate the purpose statements included in the amendment of the text. Purpose 1: This is additional language to accompany the appropriation of \$800,000 to support the renovation improvements of Centennial Mall. The language would effectively classify the appropriation as state aid. Purpose 2: The amendment reduces General Funds for TEEOSA by \$212,958. The aid certification reflects the reorganization incentives which are funded by cash funds. Purpose 3: The committee did not move the case management money from Program 33, the operations budget program, to Program 347, the aid program, in fiscal year '12-13, but the Governor did in his recommendation. When the agency sent a letter asking for the increased funding to lower caseload ratios, the department based their numbers on the Governor's recommendation. The Fiscal Office based it on the Appropriations Committee recommendation. This change reconciles the differences in starting point between the department and the Fiscal Office. Purpose 4 harmonizes the cash fund earmarks with appropriation. Purpose 5 changes "may" to "shall" in the section that prohibits certain services from being eliminated or reduced in Medicaid and CHIP. The language was taken directly from LB952, but the committee expressed strong opinions that the cuts could not be implemented. The amendment tightens the language to ensure that reductions do not occur. The last one: to correctly place funding for contracted case management in the appropriate program, correct the federal fund number, and harmonize earmarks with appropriation and designate a fund source. These are mainly just technical or things to clean up LB968 on Select File. If you have any questions, I would try to answer them. Thank you. [LB968 LB952]

SENATOR GLOOR: Members, you've heard the opening on AM2449. Are there senators who wish to be recognized? Seeing none, Senator Heidemann. Senator Heidemann waives. The question is, shall the amendment to LB968 be adopted? Those in favor vote aye; those opposed vote nay. Record, Mr. Clerk. [LB968]

CLERK: 43 ayes, 0 nays, Mr. President, on the adoption of Senator Heidemann's amendment. [LB968]

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SENATOR GLOOR: The amendment is adopted. Continuing with LB968, Mr. Clerk. [LB968]

CLERK: Next amendment, Senator Flood, AM2481, with a note you want to withdraw, Senator. [LB968]

SENATOR GLOOR: No objections, so ordered. [LB968]

CLERK: Mr. President, if I may, some items for the record before we move on. Very quickly, Urban Affairs Committee, chaired by Senator McGill, reports LB1001 to General File with amendments. Senator Krist offers LR499. That will be laid over. LR500 is a resolution by Senator Lautenbaugh calling for an interim study. That will be referred to Reference. Senator Krist, amendments to LB1158, and Senator Hadley to LB1158. (Legislative Journal pages 998-1002.) [LB1001 LR499 LR500 LB1158]

Next amendment, Mr. President, LB968, Senator Howard, AM2491. (Legislative Journal page 972.) [LB968]

SENATOR GLOOR: Senator Howard, you're recognized to open on your amendment. [LB968]

SENATOR HOWARD: Thank you, Mr. President. Members of the body, this evening I bring you an amendment that will put money back into the General Fund budget, and I look forward to your discussion. The need in this state is great. In the past three years we have decreased the funding for education, cut Medicaid funding for those people most in need of help, left federal dollars for needed programs on the table for other states to take because we didn't want to put up state dollars, and just now turned our backs on the glaring needs of youth in the system at Kearney YRTC. In the face of all of this, Health and Human Services has committed us to paying, and you've heard it said on the floor before, a golden parachute to a Kansas agency that has now left the state as a lead contractor. I will tell you why this is problematic for me. In the latest agreement with KVC, and this is Amendment Ten. I don't know if any of you have looked at the contract or are very familiar with it, but they are up now to the tenth amendment, there is an agreement between Health and Human Services and this agency that this agency is responsible for the bills that they have contracted with any subcontractors. I'm going to take a minute to read that to you. The "contractor will make its best effort to identify all subcontractors and vendors that have provided services through February 29, 2012, and those that have not been paid in full. It is further the intent of the parties that contractor will pay all claims rightfully due and owing for services performed through February 29, 2012," which is when this agency discontinued services, "as quickly as practicable prior to April 30, 2012." They have the responsibility to pay any subcontractors that they used, up and through February 29, 2012. Kerry Winterer, with their subcontractor, told me that the department did not want to get in the same situation

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that they were in with Boys and Girls. Well, I can certainly appreciate that. However, this is a totally separate contract from any agreement with the Boys and Girls agency. And they have done their best to put pieces in this contract to address the things that caused the problems with Boys and Girls. As I said when I spoke on the mike last week, there are two separate agreements. Mr. Winterer then said that the \$6 million, \$6 million--this could fund the Kearney YRTC, let me think, five times over--\$6 million dollars was needed to make sure that we got our records back. It's clear in the contract that this was agreed to and that these files would be returned to Health and Human Services. The third justification for this bonus money, this golden parachute, was that the money had been front-loaded to pay for KVC to provide services for more children who are out of home, with the thought that as time progressed that those children would be in home and fewer children would be in out-of-home placements. When I asked Kerry Winterer about this, he said, well, there were some children returned home. And I said, well, how many? I'd like to see the numbers. Did this actually materialize? And he told me he would get me that information. He said that in committee, but I'm still waiting to see this, and I think it's been maybe two, three weeks now. But I would still like to see the information. The promise that KVC made did not materialize. I say that to you and I emphasize that the \$680 million of our taxpayer money, in the simplest terms, is a payoff devised by a powerful lobbyist and paid for by state dollars. We have much greater needs for our taxpayer dollars than contributing money directly to the bank account of an agency in Kansas. I'm looking forward to your discussion and I'd like to have your opinions and your viewpoints on our paying out this money to an agency who has now ended their services to the children in our state. Thank you, Mr. President. [LB968]

SENATOR GLOOR: Thank you, Senator Howard. We now move to floor debate. There are senators wishing to be recognized. Senator Coash, you are recognized. [LB968]

SENATOR COASH: Thank you, Mr. President. Now, good evening, colleagues. This debate will probably remind us of the debate we had last week when we were debating whether or not to pay subcontractors when their lead agencies had already been paid. It might also remind you of the debate we had earlier two weeks ago when we decided to move forward with one lead agency in the Omaha service area and we had debates about contracts. And I've looked into this particular issue that Senator Howard has brought to us. And, colleagues, I'm not going to speak about the quality of service that KVC provided in our service area, because the majority of it was right here in Lincoln, so I talked with lots of families who intersected with them. But this amendment is not about the quality of service. The quality of service issue has already been vetted and the department has determined that they no longer want to utilize KVC as a lead agency. KVC agreed to that, and they had a contract and they signed it, and both agreed. The contract was signed. HHS agreed. The provider agreed. The services were delivered. If we pass this amendment, colleagues, do you think that this will be over? Put yourself in this position. You signed a contract for quite a bit of money to do a

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certain thing. You hold up your end of the bargain. The person who signed it with you, the other signature, makes sure you hold up to the end of the bargain. You move forward in good faith. And then you see an amendment like this that says we changed our mind. Now regardless of your feelings about KVC, I want you to think about the impact that's going to have on other providers who we desperately need in this community. We need more providers. And what happens...what kind of message are we going to send when we tell them, well, the precedents of the Legislature and HHS is this: You agree to do something, we agree to pay you for that, but then the Legislature will come in and say, no, we changed our mind. Do you think KVC will go away? They will not. They will get their money and they will do it legally through the court system, which will cost us much more than this amendment is proposed to save. What message might we send? Well, we might be sending, well, the Legislature will pick the winners and the losers here. And Senator Howard has got her reasons for bringing this. I don't think she's happy with the services that KVC provided. I can't say I've always been happy with them either. But I will tell you one thing. In my first year in the Legislature here, colleagues, we had another provider who went under, just dropped down, shut their doors, and quit on thousands of children overnight. They didn't do a graceful, planned exit as one of the other providers did. They didn't go into bankruptcy court as another provider did. They just shut their doors, stopped paying their employees, and left children who needed their service in the lurch. That was Visinet. And I want to tell you, colleagues, who picked up the slack? KVC did. They came in and they took over every single case that Visinet dropped. And maybe after that they got in over their heads. [LB968]

SENATOR GLOOR: One minute. [LB968]

SENATOR COASH: Maybe that was one of the straws that broke their back and led to the decision that they were no longer an appropriate provider to provide lead agency services. And the state, through Senator Campbell's committee, has decided that's probably not the direction we're going to go anymore, and I'm fine with that, because it's not about who's providing the services, how well it's doing. But, colleagues, if you think that AM2491 is going to put money back in the General Fund, it's coming right back out and it will come out through a court order. And then guess who gets to pay attorney fees? The loser pays. I would ask you to consider that. Thank you, Mr. President. [LB968]

SENATOR GLOOR: Thank you, Senator Coash. Senator Lautenbaugh, you are recognized. [LB968]

SENATOR LAUTENBAUGH: Thank you, Mr. President. Members of the body, I don't think I can improve on how Senator Coash just explained that, to be honest. Some of us may not like this and I understand that, but I think it's a deal that's been struck. And I think if we back out or decide we change our mind or just refuse to authorize this

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payment of these funds, well, I think I know where we're going to end up. Well, we're going to get sued. So this does dovetail with the conversation we had last week on the claims bill. But this is something that we have agreed to do, maybe not us personally, but still it is something that the state has agreed to. And while I'm not standing up here saying we shouldn't discuss this, but I am standing up here to say I don't think we have much of a choice but to pass this along and wrap this up once and for all. As Senator Coash said, if we don't approve this money, (a) we're not going to save any money in the long run, and (b) this entity isn't just going to go away and say, okay, well, I guess we lost. We'll be dealing with this on an ongoing basis. So while it's not ideal, far from it, I think it is important that we do vote green for this amendment and, you know, take care of this deal. I'm sorry, something occurs to me. I actually meant you should vote red on this amendment. (Laugh) How about if you just oppose the amendment. You can pick whichever button you think best accomplishes that, and I'm going to use the red one and I hope you do the same. Thank you. [LB968]

SENATOR GLOOR: Thank you, Senator Lautenbaugh. Senators in the queue: Krist, Howard, Lambert, and Lathrop. Senator Krist, you're recognized. [LB968]

SENATOR KRIST: Thank you, Mr. President. Good evening, Nebraska and colleagues. To be consistent and fair across the board I will again repeat: These were terrible contracts. They were not thought out very well. They were not funded correctly. There was no financial oversight. So that's my premise going forward, has been since the beginning of this session. Now at the end of this, we want to get rid of this contractor. So what does Mr. Winterer and the Department of Health and Human Services do? They do the old top gun trick. They write checks before they can cover them. They settled with the contractor and then they went to our Appropriations Committee and said, we want the money. Now I've asked every member of Appropriations if they saw a change in the contract. No one saw a change in the contract. Senator Howard is right. That amendment that she read to you or that she references is, as far as I know, the last legal document that we have between the Department of Health and Human Services and the contractor. Now here's what I worry about. I worry that the settlement that we have projected last week that Senator Coash mentioned, that the Business and Labor Committee pushed out for us, and \$4.2 million of this money, which is a pass-through that goes to the people who are providing services, will be confused as not consistent if we vote green on this and if we voted green on that bill on the...the bill last week so we're paying the providers that are still owed. To be fair, and Senator Coash and Senator Lautenbaugh both articulated it very well, these folks are not going to go away. But if I were going to support AM2491, it would have to be amended to say that the pass-through that goes to those providers would have to be paid at the \$4.2 million rate. I do fault the Appropriations Committee for allocating that amount of money without having a change of contract. I fault anyone at this point who allows the Department of Health and Human Services to continue to amend contracts that should be ripped up and thrown away. There should be a new contract with the existing

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provider, NFC. That hasn't happened yet, colleagues. That's not a new contract. That is again additional money that is thrown at a contract. So I'm sure all that's very confusing, so let me just summarize. Senator Howard, I love you, but AM2491 is going to cause a lot of trouble because that high-priced lobbyist and KVC is not going to go away. The best thing that could happen to the state of Nebraska is if we settled this issue and we move forward. It might be one of the first things we've disagreed on the whole session. We have to be rid of this contract. We have to move on to better-thought-out contracts. And if this is called settlement money or golden parachute or whatever it is, we need to move forward. The last piece of information I will give you is if this was a good contract, all that contractor would have done for us, all the information that they had, all the data that they would have produced would be proprietary. It would belong to the state of Nebraska. So my question is, colleagues, what are we paying for? And in summary I will tell you we are paying for the mistakes that started in 2009... [LB968]

SENATOR GLOOR: One minute. [LB968]

SENATOR KRIST: ...when then-Director Landry entered into these contracts. The best thing we can do is put this in the rearview mirror and move forward. Thank you, colleagues. [LB968]

SENATOR GLOOR: Thank you, Senator Krist. Senator Howard, you're recognized. [LB968]

SENATOR HOWARD: Thank you, Mr. President. And thank you, Senator Krist. And, yes, we do agree on many of the issues that we hear in committee and that we hear out here on the floor. This is one I adamantly disagree on making payment to for a number of reasons. I handed out a sheet to you, had it distributed on the floor. The CEO president of this agency...and you may say this isn't relevant but to me it is. The CEO of this agency in 2010 had an income of \$645,751. Now for an agency president CEO to have that much in personal income and to fail to adequately pay foster parents or possibly even providers, I just find unconscionable. And if you look at the bottom of this page, KVC Behavioral HealthCare Nebraska, Inc., listed a line item for intercompany management fee of \$1,667,000. And that was money that went directly to Kansas, where their headquarters is--Olathe, Kansas. I don't think our Nebraska taxpayers really want to send their dollars directly to Kansas, and I feel a real obligation to stand here on this floor tonight and tell you that. KVC has continually come back to the department and told them the funding to provide services was inadequate--continually--from the time the contracts were signed in November of '09. And the most recent discussion they had was in November of 2011, when they said we want \$2.5 million more every month to continue providing services. Kerry Winterer told our committee, Health Committee, that he was able to negotiate them down to \$1.8 million in addition, with the understanding that a case rate would be in place in January. Case rate wasn't agreed upon. We have KVC's letter of resignation. We have the contract that tells us you're

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obligated to pay their subcontractors, which by the way I haven't heard either by e-mail, phone call, or personal contact from any subcontractors of KVC saying that they are owed money and are concerned that they're not going to get paid. We settled the debt with Girls and Boys. Last week, we advanced a bill for \$2.5 million--\$2.5 million--and that was to cover all the outstanding bills that were left behind. We're giving KVC over twice as much money not knowing what the bills are. Am I the only one that finds this to be problematic? I know, I know, I know we could pay them; they're out of our hair. But is that the right thing to do with somebody else's money? And I'm talking about taxpayer dollars, of which I am a taxpayer. Is that the right thing to do with our money? Earlier, Senator Coash said he was concerned. He asked a question about the YRTC facility: Is this the best bang for our buck? Well, I'm standing here asking you this right now: Is paying out \$6 million to have an agency go away and leave us alone--and I'm sure their lobbyist will be paid a portion of that for his work--is that the best bang for the taxpayer dollar? And I'm going to give you all a chance to let me know. Thank you. [LB968]

SENATOR GLOOR: Thank you, Senator Howard. Senator Lambert, you're recognized. [LB968]

SENATOR LAMBERT: Thank you, Mr. President, colleagues. I think we all feel a lot of frustration here with this situation. I certainly do and anybody that was closely involved in it, as the committee members on HHS and I think probably all my colleagues here that are familiar with the situation at all, we feel a great deal of frustration. And do we want to pay that? I sure don't want to. But we've got an agreement. You know, tax dollars going to Kansas? No, I don't like that either, but there's a contract. And I guess if we don't feel that we're getting the bang for our buck, maybe that's shame on them, but it's certainly shame on us agreeing to something like this and letting the contract go the way it did. It's a sad situation. It's a tough situation to be in. But is there a win for us? I don't see how it will be. We're going to pay this money. We're either going to pay it by court order or just pay it and be done with it, I believe. It's kind of the old story, wash your hands rather than take a bath, maybe. And I personally feel at this point that, as angry and as upset as it makes me feel and I'm sure everybody else here, let's be done with it, move forward, and use our energies on something else. Thank you. [LB968]

SENATOR GLOOR: Thank you, Senator Lambert. Senator Lathrop, you are recognized. [LB968]

SENATOR LATHROP: Thank you, Mr. President and colleagues. Gwen Howard has been a friend of mine for a long time. Senator Howard has been a friend of mine for a long time, and I generally will listen very carefully when she talks about health and human services issues. And I appreciate her concern for the way we are spending money here. With that said, I'm going to have to oppose the motion or the amendment, and I want to offer two reasons. One is--and I'm not pleased that this is the case but it is--this is an agreement. It is a signed agreement. Whether it's ill-advised or not,

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probably is, ill-advised or not or the result of great lobbyists or an honest reconciliation between the state and one of its contractors at the termination of the contract is a debatable issue. But if it's a signed contract and an agreement we entered into, we can pay it now or we can pay it after a court judgment, and that's just the case and we'll be back here paying it later. My second and maybe more personal appeal goes something like this. I stood on this floor a few days ago and I said we need to pay our bills and we need to clean up the mess that was created with the failed privatization effort, and I asked you to approve \$2.5 million in the claims bill which represented the money necessary to pay the contractors for Boys and Girls Home. And there was some dispute over whether that was a good idea or a bad idea or precedence or not, and you'll recall that debate. And I stood here and said we are giving KVC the money to pay their subs; we should give the money to the subs of Boys and Girls Home. And so to be consistent in my position, I believe we need to pay, for those two reasons, and I'll ask you to remember my support (sic) for this amendment when we get to the claims bills, which we'll move on Select File here shortly. Colleagues, I think Senator Lambert put it best when he said we're all frustrated with the cost of the cleanup. Whether it's a natural disaster or one created by another branch of government, when it comes to cleaning it up and the cost to clean it up, we have to pay our bills. We have to pay our bills. And whether I would have entered into that contract or whether if someone would have asked me whether it was a good idea or the amount was fair or what the money was going to, I think the one takeaway from this session, if nothing else, is what Senator Krist has been saying from the beginning: We need to do something different with these contracts. We need to have good lawyers look them over. We need to have them run through the Department of Administrative Services or the Attorney General's Office or something. But as a body, as an institution, I think we are uncomfortable with what we have seen of HHS's contracting, and this may well fall in that category. Thank you. [LB968]

SENATOR GLOOR: Thank you, Senator Lathrop. The Chair recognizes Senator Howard. [LB968]

SENATOR HOWARD: Thank you, Mr. President. If Senator Lathrop would yield to a few questions. [LB968]

SENATOR GLOOR: Senator Lathrop, would you yield? [LB968]

SENATOR LATHROP: Yes. [LB968]

SENATOR HOWARD: Thank you, Senator Lathrop. And you're right, we have been friends for a long time, and I certainly respect your opinion on these matters. And possibly if I could ask you about some of the finer details of the contract it would be helpful. I've got the contract here and I can read that to you. I know you don't have it at hand. [LB968]

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SENATOR LATHROP: Okay. Then if you'll help with the terms, I'll answer any question I can. [LB968]

SENATOR HOWARD: Thank you. And again I'm looking at Amendment Ten to the contract. This amendment was signed by Kerry Winterer on, it looks like, the first of March, and it was signed by B. Wayne Sims on the 29th of February. Now in this, it says the contractor will make its best effort to identify all subcontractors and vendors that have provided services through February 29, and those that have not been paid in full. It is further the intent of the parties that contractor will pay all claims rightfully due and owing for services performed...April 30, 2012. Now in this agreement there is not, that I'm aware of, an additional amount provided. There's no reference to the \$6 million. The last amount of money that I'm aware of that was paid was the \$1.8 million. Would that indicate that the contractor is responsible for the subcontractors? [LB968]

SENATOR LATHROP: Well, of course, the...principally, the contractor is responsible for the subs. And I...when I spoke the other day, I used...I was not looking at the amendment that you reference, but I was looking at the Appropriation Committee's budget recommendations. And on page 24, they broke down the \$6 million, \$4.2 million of which was identified as necessary for KVC to pay its subs. I don't hear that in the amendment you just read, and maybe the question is better presented to a member of the Appropriations Committee to determine how that amendment turned into this language in their Appropriations book. [LB968]

SENATOR HOWARD: Well, I appreciate that. And if I could persevere to ask you another question while I have you here. [LB968]

SENATOR LATHROP: Sure. [LB968]

SENATOR HOWARD: Well, actually two. Have you seen any billings come in from subcontractors of KVC? I know you had all the information... [LB968]

SENATOR LATHROP: No. [LB968]

SENATOR HOWARD: ...regarding the Boys and Girls. [LB968]

SENATOR LATHROP: No. The way this works, though, to be a little more thorough in my answer than you may want me to be, the Business and Labor Committee gets claims that come from the Claims Board. So to make a claim, you have to file a claim according to the Miscellaneous Claims Act or the Contract Claims Act with the State Claims Board. They consider it for a period of time; vote on it or ignore it; and then after six months it may move to be included...well, you can either sue on it if it's a contract or a tort. In the case of miscellaneous claims, it then comes to the Business and Labor

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Committee. Long answer. I haven't seen from any KVC subs. [LB968]

SENATOR HOWARD: Thank you. And I haven't either. And the last question I'm going to ask you, and I'm going to read from one of the previous amendments in this contract: All information collected and compiled by the contractor on behalf of DHHS under the terms and conditions defined by this contract is the sole property of DHHS and subject to all privacy and security safeguards defined by DHHS. Can you tell me what that refers to? [LB968]

SENATOR LATHROP: That was an amendment to the contract? [LB968]

SENATOR HOWARD: This was in...I can tell you which one. This was a part of the...well, actually a part of the original contract. [LB968]

SENATOR GLOOR: One minute. [LB968]

SENATOR LATHROP: Under the original contract I think all of the information in the computers is the state of Nebraska or the Department of Health and Human Services', if I remember the terms of that contract. And I have tell you I haven't read it in the last, well, for maybe a week ago. Is that your question, who owns that (inaudible)? [LB968]

SENATOR HOWARD: It is. And in addition to the information in the contract, I would assume that would mean any case files, anything that they had been given by the department in terms of records. [LB968]

SENATOR LATHROP: I think that's...my recollection is that when I read the contract, all of the stuff that was in the computers and the files would essentially revert back to the state, or the state owned them and they could have them if the contract expired or terminated. [LB968]

SENATOR HOWARD: Thank you. That...I would agree with you that that's how it resonates with me as well, but I'm not an attorney. I've been told today that one of the stipulations now of receiving that money is that KVC said that they are not returning these files unless this money is paid. Again, I say to you... [LB968]

SENATOR GLOOR: Time, Senator. [LB968]

SENATOR HOWARD: ...\$6 million,... [LB968]

SENATOR GLOOR: Time, Senator. [LB968]

SENATOR HOWARD: ...over twice as much as we paid out in legitimate claims to Boys and Girls subcontractors, \$6 million without an accounting. [LB968]

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SENATOR GLOOR: Time, Senator. [LB968]

SENATOR HOWARD: Thank you. [LB968]

SENATOR GLOOR: Senator Bloomfield, you are recognized. [LB968]

SENATOR BLOOMFIELD: Thank you, Mr. President, and good evening, members. I am no great lover of KVC, but I do agree with pretty much what everybody has been saying here. I stood here last week and voted to make whole the people that were shortchanged when Boys and Girls went away. I don't believe we want to revisit that by passing this amendment and having a whole new group of people coming in next year wanting to be made whole. So while I would just dearly love to support this amendment, I cannot. But I can yield the remainder of my time to Senator Howard if she would like to expound more on it. [LB968]

SENATOR GLOOR: Senator Howard, 4 minutes 12 seconds. [LB968]

SENATOR HOWARD: Thank you. Thank you, Senator Bloomfield. The reason I bring you this amendment is not to just have a discussion on the floor as we go into the evening, but because I feel very strongly about this. When the Governor and Health and Human Services were looking at contracting, I went to the Governor and I went to Lavon Heidemann, both, and said this is going to cost you more money than you've ever imagined, because I worked in that agency for 34 years and I saw how underfunded it was every single year. And for us to be in a position now where we're just going to hand over \$6 million to an agency...and I'm not even talking about the quality of the work, Senator Coash. I haven't even brought that up. But to hand over this amount of money, and we all claim we're good stewards of the taxpayer dollar, and I think we try to be that, I just...I, for one, can't do it. And if they want to take us to court, I'd certainly say we've got a contract that spells out the agreements and that would be the method that I would choose to address this. Could be wrong, but I'm not willing to just say, all right, whatever amount of money you need, to leave us, is fine. Thank you. [LB968]

SENATOR GLOOR: Thank you, Senator Bloomfield and Senator Howard. The Chair recognizes Senator Lathrop. [LB968]

SENATOR LATHROP: Thank you, Mr. President and colleagues. You might have thought that I said everything I needed to say. I actually did. And then I got a call from Senator Lautenbaugh who pointed out that I made the same mistake he did in suggesting that you support this amendment. I think what I meant to say, like Senator Lautenbaugh, is that I've just expressed my opposition to AM2491, just to be clear. Thank you. [LB968]

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SENATOR GLOOR: Thank you, Senator Lathrop. Senator Christensen, you are recognized. [LB968]

SENATOR CHRISTENSEN: Thank you, Mr. President. You know, I just make a simple statement quickly here: How do you help one provider over another one? Let's be fair to each one of them. Let's eliminate KVC here and then, if the body chooses, put everybody back in the other amendment. You've got to be equal. Either you're going to take care of them all or you take care of none of them. Let's be fair. You can't have preferential treatment, one over the other. The fact is, if you look over what has happened during the time that we have had KVC and all the other providers, KVC has come back and got money time and time and time again. How much was given to the other providers? None. Why? There must be a reason why. I can only think of one. But why would we be supporting one and not all of them? I smell a rat somewhere. I'm sorry, I'll say it like it is. Why are we supporting one over the other? Go back and look at the payments that have been done. One has consistently got additional money. The rest have not. Is that what you stand for here as a bunch of senators? Is that what Nebraskans stand for? To me, it's very simple: You vote for this, you cut it out, you bring back the other amendment, and you have an up and down vote on taking care of everybody. I think it's very simple. Treat everybody the same and do it fairly. That's the way Nebraskans do business. Thank you. [LB968]

SENATOR GLOOR: Thank you, Senator Christensen. There are no senators remaining in the queue. Senator Howard, you're recognized to close on AM2491. [LB968]

SENATOR HOWARD: Thank you, Mr. President and members of the body. I think I can answer Senator Christensen's question about why we are doing this differently. Clearly, there were two separate contracts that were in effect, and the most recent amendment on the KVC contract was signed the 1st of March by Kerry Winterer and the 29th of February by B. Wayne Sims, the CEO of KVC. Two separate contracts, two separate agreements, and this was much later in the game when I think they...the department had realized that they had to be inclusive regarding payments of the subcontractors. I object to this additional payment. I think we are squandering the taxpayer dollars in a big way, in a big way, when there are much greater needs out there that we've been asked to address. We're cutting back on Medicaid funding. We're leaving money on the table, federal dollars on the table. We've cut back on programs that would help disabled children. I think you remember Senator Conrad coming in and describing some of the hearings that they've had where the parents have come in with children who are very, very dependent on state services. And yet when we discuss that, we look at it in terms of putting less money into those programs. I strenuously object to handing over \$6 million without justification, without a listing, at least, of who will be paid, where this money is going to go. This has been a debacle from the beginning and I hope you will not add to the major cost of this by allowing this agency located in Kansas to be the recipient of \$6 million in Nebraska taxpayer dollars. And I'm going to ask for a call of the

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house and I'd like a record vote in regular order. [LB968]

SENATOR GLOOR: There has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; those opposed vote nay. Record, Mr. Clerk. [LB968]

CLERK: 29 ayes, 0 nays, Mr. President, to place the house under call. [LB968]

SENATOR GLOOR: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senators Heidemann, Nordquist, Harms, please return to the Chamber. Senators Heidemann, Nordquist, and Harms, please return to the Chamber and record your presence. Members, the question is, shall the amendment to LB968 be adopted? Mr. Clerk, read the roll, regular order. [LB968]

CLERK: (Roll call vote taken, Legislative Journal page 1002.) 4 ayes, 32 nays, Mr. President, on the amendment. [LB968]

SENATOR GLOOR: The amendment fails. Raise the call. Senator Flood, for a Speaker's announcement. [LB968]

SPEAKER FLOOD: Thank you, Mr. President. Members, just a quick announcement as it relates to tonight and tomorrow. I see us continuing on with our agenda. We're going to work into the night, and, after visiting with several of you, our start time tomorrow will be 9:00 a.m. Our start time tomorrow will be 9:00 a.m. Thank you, Mr. President.

SENATOR GLOOR: Thank you, Senator Flood. Mr. Clerk.

CLERK: Mr. President, some items before the next amendment, if I might. Two study resolutions: LR501, LR502 by Senator Mello. Amendments: Senator Mello, LB357 and LB731. (Legislative Journal pages 1003-1004.) [LR501 LR502 LB357 LB731]

Senator Ashford, I now have AM2500. (Legislative Journal page 973.) [LB968]

SENATOR GLOOR: Senator Ashford, you're recognized to open on AM2500. [LB968]

SENATOR ASHFORD: Thank you, Mr. President. This request appropriates \$60,000 in cash funds to the Nebraska State Patrol to contract with the University of Nebraska to study sex offender recidivism data after the passage of LB285, which changed the Nebraska state offender classification system from an evaluation of risk assessment to an offense-based assessment system. We want to...of course, we did pass LB285, which did register a number of...on a public register, a number of offenders who had not

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been publicly registered on the sex offender list. And it is the...the issue to be addressed here is the research of that population, to look at and determine the recidivism, the reoffending of the individuals who had been placed on the sex offender list...registry list to determine what the risk is for this population. There will be another amendment, to LB969, which actually would transfer the money out of a cash fund in the Public Advocacy agency over to the State Patrol. But this is the first step in that process. Thank you, Mr. President. [LB968 LB969]

SENATOR GLOOR: Members, you've heard the opening on AM2500. Senator Conrad, you are recognized. [LB968]

SENATOR CONRAD: Thank you, Mr. President. Good evening, colleagues. I rise in opposition to AM2500, and let me tell you why, a couple of reasons, actually. I've long been a proponent and defender of the good work of the Commission on Public Advocacy. And I think their record speaks for itself in terms of the quality of representation that they provide on many very difficult, emotional, and complex legal issues. I don't want to go into a long history on the origins of that agency, but a brief sketch, essentially was it was a public policy choice by our predecessors that, in order to help relieve the burden associated with litigation costs for capital cases and other significant criminal cases that exist from the county governments that would otherwise take those up, in terms of the public defender or otherwise, that we use court fees to fund this--it's cash funds, it's not a General Fund obligation--to carry out this important work that is critical to ensuring our legal system works at its best on these very, very serious issues. Their philosophy, in addition to the legal work that they do, but how they interface with us in Appropriations Committee and as a state agency is pretty straightforward. They don't spend money that they don't have a need to; they're very protective of their funds. And they do need to carry a balance in order to be responsible for the kinds of costs that could be associated with their work on any given case. A good example would be the Mata case, for example, where almost...I believe that it was over \$1 million in terms of receipts to this agency, and it's unclear...and hopefully they'll never have to use those funds, but it's unclear whether or not they will. And I'm concerned, when you look at this in itself and then you also look at a pending piece of legislation, LB908, which has been made a Speaker priority, when you start to talk to Fiscal and you start to track this out, if this amendment and LB908, even in its current amended form, were to move forward, you're going to see a reduction in the cash balance to a place that's just not responsible. Projections could take it as low as \$300,000 a year, and that's problematic. We have talked many, many times on this floor, and I don't want to rehash those debates, about the...whether or not we should have capital punishment in Nebraska or whether or not we should abolish it. And I think that it would be fair to say that even proponents of capital punishment have conceded that if we're going to have a system in place, we have to ensure that we have adequate defense and zealous representation to ensure that system works as it is meant to. We're getting to the point with this amendment and with the pending legislation where

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we're jeopardizing that equal playing field, that safeguard in our system to ensure that we have adequate protections on the most serious of issues before us. So I'm definitely in opposition to both pieces of legislation; the impacts on this very important state agency would be grave. And it's not to denigrate the importance of... [LB968 LB908]

SENATOR GLOOR: One minute. [LB968]

SENATOR CONRAD: ...the public policy that Senator Ashford has brought forward with these proposals, but it's because the consequences themselves would be far too great to bear. And this is an issue that I've worked on an interim study on and will continue to debate. But these cash funds should not be treated as an ATM for our own projects or for other committees to go out and grab to fund their public policy issues. They need to be taken streamlined, in concert with the budget as a whole. Thank you, Mr. President. [LB968]

SENATOR GLOOR: Thank you, Senator Conrad. Senator Lathrop, you're recognized. [LB968]

SENATOR LATHROP: Thank you, Mr. President and colleagues. Now, Senator Conrad has been a friend of mine for a long time. I...now I have to find myself two times in a row standing in opposition to the position taken by a good friend. Listen, let me tell you what this is about--okay, it's \$60,000--and why it's important. Over in the Judiciary Committee--and I hope I'm not repeating what Senator Ashford said when he introduced this--we had a system in place. And when Senator Bourne was here, he kind of went through and tried to fix all of this sexual predator stuff and bring some sense to it; I remember reading the articles before I got here. It was an overhaul, right? And that worked or appeared to work for us. And then the Adam Walsh came along. And it was one of those things where they were dangling federal money in front of us, right? And they said, you need to do this or you're not getting some federal money. And we jumped on it. And over in Judiciary Committee we thought we were doing the right thing. And we may have done exactly what we should do; Adam Walsh may be a great idea; we don't know. But what we have learned is that there are two possible ways to approach the sexual predator, the person who is apt to reoffend. One is we can do a psych evaluation on them, do an evaluation to determine whether they are at risk of recidivism. That's the old system. And the question...and then the other approach is to say: If you commit this offense, you're going to be on the list for X number of years. What we are told is there may be a problem with putting everybody on the list by offense, because we put them on there regardless of whether they're at risk to repeat the offense. In other words, what we want to do is not continue to punish them but to warn the public: Your next-door neighbor might be about ready to do something awful, keep an eye on him; or don't move into the neighborhood; or don't let him into Skateland, right? So if we put every single person on the list, that list now, under Adam Walsh, may--I don't know until we do the study--may include people that aren't at risk. And in the meantime, the people that

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are the high-risk folks hide among a list that is growing, because of Adam Walsh, and it now includes people who are at risk and those who are not at risk. And the question that we're trying to answer with this study is this simple: Which approach best serves the public purpose? Instead of just accepting that the feds had it right, the question the study is intended to get to is: Is the state better served, are the citizens better informed if the list is pared down by some psych evaluation that identifies those who are likely to repeat this kind of offense? Is that effective? Do those studies work? Do those studies let people through the infield who will go repeat their offense? Or are we better served by the Adam Walsh approach? We did not come to a conclusion in Judiciary Committee. But what we did have is a parade of people who said: I am not at risk to repeat, and I'm on the list, and it's ruining my life;... [LB968]

SENATOR GLOOR: One minute. [LB968]

SENATOR LATHROP: ...my kids go to school and their friends say, I see your dad is on the sexual predator list. Well, that's okay if the guy is at risk to repeat. And we didn't take a position in Judiciary Committee. I can tell...I think I can speak for every single person in there. We did not take a position on whether we should be under the old system or Adam Walsh. What we said is let's have somebody at UNO, who we've met, who is capable--he's a Ph.D. and a capable person--study the issue and come back and tell us, is Nebraska best served by having the Adam Walsh Act approach to identifying and putting these people on the list, or are we better served by a different approach? I think the money is well spent, and I would encourage your support... [LB968]

SENATOR GLOOR: Time, Senator. [LB968]

SENATOR LATHROP: ...of the amendment. [LB968]

SENATOR GLOOR: Thank you, Senator Lathrop. Chair recognizes Senator Lautenbaugh. [LB968]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. I wonder if Senator Ashford would yield to a question. [LB968]

SENATOR GLOOR: Senator Ashford, would you yield? [LB968]

SENATOR ASHFORD: Yes. [LB968]

SENATOR LAUTENBAUGH: Senator, how much are you proposing to take from this cash fund to fund this endeavor? [LB968]

SENATOR ASHFORD: \$60,000. [LB968]

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SENATOR LAUTENBAUGH: \$60,000? Do you know how much is in the cash fund currently? [LB968]

SENATOR ASHFORD: I believe it's \$1,100,000 or \$1,200,000. [LB968]

SENATOR LAUTENBAUGH: Possibly \$1,400,000-\$1,600,000? [LB968]

SENATOR ASHFORD: Yeah. [LB968]

SENATOR LAUTENBAUGH: Do you know what the annual current budget is for the Commission on Public Advocacy? [LB968]

SENATOR ASHFORD: It is substantially less than that. I think it's \$900,000-\$930,000. [LB968]

SENATOR LAUTENBAUGH: Thank you, Senator Ashford. I don't mean to put you on the spot here. I wonder if Senator Conrad would yield to a question. [LB968]

SENATOR GLOOR: Senator Conrad, would you yield? [LB968]

SENATOR CONRAD: Absolutely, and I'm so happy to, because I'm looking right at the existing figures as they stand today. [LB968]

SENATOR LAUTENBAUGH: Okay, well, that's great, Senator Conrad, and very timely. [LB968]

SENATOR CONRAD: Okay. [LB968]

SENATOR LAUTENBAUGH: What is the balance in the cash fund today? [LB968]

SENATOR CONRAD: I'm looking at the column marked 2012. I'm looking at the total revenue, \$930,193; total expenditures, \$1,084,764; for an ending balance asset of \$1,450,059. [LB968]

SENATOR LAUTENBAUGH: So \$1.45 million is in the fund? [LB968]

SENATOR CONRAD: That's right. [LB968]

SENATOR LAUTENBAUGH: Okay. And the annual budget is nine hundred-and-some thousand? [LB968]

SENATOR CONRAD: Roughly. [LB968]

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SENATOR LAUTENBAUGH: And they're receiving that much currently to cover that expense, is that not the case, with the ongoing court fees coming in? [LB968]

SENATOR CONRAD: That's correct. [LB968]

SENATOR LAUTENBAUGH: I guess what I'm trying to figure out...because we've been down this road before. I recall Senator Chambers taking money out of this particular entity to go fund a study on guardians ad litem and some other juvenile court things. I think it was \$250,000... [LB968]

SENATOR CONRAD: Yes. [LB968]

SENATOR LAUTENBAUGH: ...and the commission moved ever forward. So I guess my question is, is this \$60,000 really a make-or-break thing for the commission, in your opinion? [LB968]

SENATOR CONRAD: No, it's not. And my comments noted that, Senator Lautenbaugh. It's not this in and of itself; it's this in conjunction with LB908 that I'm concerned about. [LB968 LB908]

SENATOR LAUTENBAUGH: And you understand LB908 has been amended to take... [LB968 LB908]

SENATOR CONRAD: I do. [LB968]

SENATOR LAUTENBAUGH: ...a lot of those concerns into account? [LB968]

SENATOR CONRAD: Well, it has taken some of those concerns into account. But I still think that it would...it leaves a projection, based upon fiscal estimations in 2018, that would be very, very dangerous if a capital case were to present itself. [LB968]

SENATOR LAUTENBAUGH: Do you know who did the projections that estimated that in 2018 we would have a problem if LB908 and this amendment both were adopted? [LB968 LB908]

SENATOR CONRAD: Yes, the Legislative Fiscal Office is where I got them from. [LB968]

SENATOR LAUTENBAUGH: And when you say a precarious position, what you're saying is there would be \$300,000 left in the fund, above and beyond the annual budget, by then? [LB968]

SENATOR CONRAD: That's right, Senator. And I think if you heard my concerns in

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opposition, a capital case, for example, like the Mata case, can sometimes require over \$1 million in expert witness fees and additional litigation expenses. So by looking at that, I know right off the bat that that leaves them with insufficient funds to carry out their statutory mission. [LB968]

SENATOR LAUTENBAUGH: Well...and, Senator, I think we're going to have to agree to disagree on whether or not this is actually an existential threat, either LB908 or this amendment, for the Commission on Public Advocacy. [LB968 LB908]

SENATOR CONRAD: Fair enough. [LB968]

SENATOR LAUTENBAUGH: But...and thank you, Senator, for your responses. This did lead lockstep to something that I was discussing off the mike, though not prepared to discuss today. And LB908 is an important bill that we're going to be dealing with. And if...I thought we were working on something to make that palatable, I guess, to the various interests, but it doesn't sound like we're getting there. And so I have a feeling, when that bill comes up we'll just have to have a protracted discussion on...well, expanding on the testimony... [LB968 LB908]

SENATOR GLOOR: One minute. [LB968]

SENATOR LAUTENBAUGH: ...we learned in the committee when my bill had its hearing. So I would urge you support this amendment and take this \$60,000 out of the \$1.4 million that are in this fund currently to pay for this important study and this important research that we're talking about to address something that--I'm on Judiciary, I'll say it too--something we did wrong a couple of years back. We're trying to fix something. This is a minimal cost from a fund that can readily afford it, and I would urge you to support this amendment. [LB968]

SENATOR GLOOR: Thank you, Senator Lautenbaugh. Chair recognizes Senator Conrad. [LB968]

SENATOR CONRAD: Thank you, Mr. President. And thank you, Senator Lautenbaugh and Senator Lathrop and others who have spoken on this issue. I don't mean to make this a precursor to debate on LB908. And I appreciate the fact that the parties are working together to try and achieve a compromise on that. But my advocacy rises from my work to support this commission at the Appropriations Committee level. And as I noted in my opening comments, no one can discount the importance of the study put forward that would be funded by AM2500. But if it is indeed that important to our state's public policy--and I take the Judiciary Committee at its word, I believe that it is, it would help us to make good policy choices--then \$60,000 is not that much, and it should be looked at as either a General Fund expenditure or a one-time transfer from the Cash Reserve or otherwise. But to continually hit one state agency that has a very clear

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mission and origin--and that's, quite simply, to provide property tax relief on the costs of indigent defense that were otherwise being borne by counties--that's where I have a level of concern. And I think that it's important to note that, again, the history is very clear on this. When the commission has a level of comfort that their cash balance is too high, they work very closely with senators in this body to see if there are worthy projects that they can fund without jeopardizing their statutory mission. And they've done that in the past and they always, it's my understanding, remain open to doing that in the future if the issues were to present themselves. Fair enough. Again, this commission does not spend what they have no need to, and they're very, very careful in terms of how they are stewards of these funds. But let's be clear, they're willing to make transfers where they can help, and that's a good thing. And maybe \$60,000 is minimal, but when you start to continually allow an evisceration and a chipping away, we don't have in statute currently, it's my understanding, a mechanism to right the ship. So if that capital case comes down the pike and they do go ahead and have to outlay those kinds of legitimate expenses to take care of expert witnesses, we don't have a mechanism to make a General Fund transfer back. So then what happens to that defense? Do we run into or run the risk of running into problems with what's provided under both the state and federal constitutions when it comes to providing representation in serious criminal cases? So it's pause for concern. I think it's fair to say that we could have a disagreement about how the funds are currently allocated or not. But with both measures pending, it does start to draw down the cash fund to a point that would jeopardize their ability to carry out their statutory mission. And their statutory mission is to provide indigent defense in serious cases and to provide property tax relief. And the further we go in this direction, it limits their ability to do that. Thank you, Mr. President. [LB968 LB908]

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PRESIDENT SHEEHY: Thank you, Senator Conrad. Senator Lautenbaugh. [LB968]

SENATOR LAUTENBAUGH: Thank you, Mr. President. Members of the body, I do recall the purpose the commission was set up for, and it was, in fact, to help the smaller counties avoid the cost of a large defense case, a catastrophic defense case. So there may be some ways they could begin now saving for that rainy day in 2018 when they might run a little short. And they could probably start right here in Lancaster, where I think they currently do the bulk of their representation, and I don't believe that was part of their original mission. And maybe there are savings to be had there. Maybe they can squirrel away a little more for that rainy day that will come in 2018, based upon some projections. Thank you, Mr. President. [LB968]

PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. Seeing no additional requests to speak, Senator Ashford, you're recognized to close on AM2500. [LB968]

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SENATOR ASHFORD: Thank you, Mr. Lieutenant Governor. This study is critical to the Judiciary Committee's role of advising this body on how we should proceed with the Adam Walsh Act, a federal compliance statute dealing with sex offenders. We have wrestled with this issue. We do not wish to proceed any further until we have a good sense of what, for one thing, what the recidivism rate is of sex offenders who would be registered under this act. And with that, I would urge the adoption of AM2500; \$60,000 out of \$1.4 million is not intended to be, nor is it, a raid on the Public Advocacy Fund's needed dollars. Thank you. [LB968]

PRESIDENT SHEEHY: Thank you, Senator Ashford. You have heard the closing. The question before the body is on the adoption of AM2500 to LB968. All those in favor vote yea; opposed, nay. [LB968]

SENATOR ASHFORD: Can I get a call of the house with a machine vote, Mr.... [LB968]

PRESIDENT SHEEHY: There has been a request for a call of the house. The question is, shall the house be placed under call? All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB968]

CLERK: 25 ayes, 0 nays to place the house under call. [LB968]

PRESIDENT SHEEHY: The house is placed under call. All unexcused senators please report to the Legislative Chamber. All unauthorized personnel please step from the floor. The house is under call. Senators, please record your presence. Senator Ashford has indicated that we may continue. Members, you heard the closing on AM2500 to LB968. Senator Ashford, how would you like to proceed? We can do a roll call or call-ins. Senator Ashford is accepting call-ins. [LB968]

CLERK: Senator Hadley voting yes. Senator Louden voting yes. Senator Smith voting yes. Senator Cornett voting yes. Senator McGill voting yes. Senator Heidemann voting no. Senator Fischer voting no. Senator Carlson voting yes. Senator Cook voting yes. Senator Adams voting yes. Senator Seiler voting no. Senator Sullivan voting no. Senator Wightman voting no. Senator Dubas voting yes. Senator Fulton voting no. Senator Harms voting no. Senator Nordquist voting no. Senator Hansen...how...is that a no, Senator? Voting no. Senator Wallman voting yes. Senator Lambert voting yes. Senator Nelson voting no. Senator Brasch voting yes. [LB968]

PRESIDENT SHEEHY: Record, Mr. Clerk. [LB968]

CLERK: 25 ayes, 11 nays on the amendment. [LB968]

PRESIDENT SHEEHY: AM2500 is adopted. Next amendment, Mr. Clerk. The call is raised. [LB968]

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CLERK: Senator Lautenbaugh, AM2523, I have a note you wish to withdraw. [LB968]

SENATOR LAUTENBAUGH: That's correct. [LB968]

PRESIDENT SHEEHY: AM2523 is withdrawn. [LB968]

CLERK: Senator Langemeier, AM2527. [LB968]

SENATOR LANGEMEIER: Mr. President, I wish to withdraw. [LB968]

PRESIDENT SHEEHY: AM2527 is withdrawn. [LB968]

CLERK: Senator Lautenbaugh, AM2560. [LB968]

PRESIDENT SHEEHY: Senator Lautenbaugh, you're recognized to open on AM2560 to LB968. [LB968]

SENATOR LAUTENBAUGH: Thank you, Mr. President. I would like to withdraw that amendment. [LB968]

PRESIDENT SHEEHY: AM2560 is withdrawn. [LB968]

CLERK: I have nothing further on the bill, Mr. President. [LB968]

PRESIDENT SHEEHY: We'll return to floor discussion on LB968. Seeing no requests to speak, Senator Flood, you're recognized to close. [LB968]

SPEAKER FLOOD: Members, I'd make the motion that we advance LB968 to E&R for engrossing. [LB968]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB968 advances. Mr. Clerk, we'll now proceed to LB... [LB968]

CLERK: Mr. President, LB969. I do have E&R amendments, first of all. (ER211, Legislative Journal page 934.) [LB969]

PRESIDENT SHEEHY: Senator Langemeier, you're recognized for a motion. [LB969]

SENATOR LANGEMEIER: I'd move the adoption of the E&R amendments to LB969. [LB969]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye.

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Opposed, nay. The amendments are adopted. [LB969]

CLERK: Senator Ashford, AM2453. (Legislative Journal page 943.) [LB969]

PRESIDENT SHEEHY: Senator Ashford, you're recognized to open on AM2453 to LB969. [LB969]

SENATOR ASHFORD: With some trepidation, Mr. Lieutenant Governor, I stand to request that AM2453 be adopted. This simply effects the transfer that we've just discussed on LB968 from the Public Advocacy Commission to the State Patrol so the Patrol may conduct the study we're requesting them to do. [LB969]

PRESIDENT SHEEHY: Thank you, Senator Ashford. You've heard the opening of AM2453. Seeing no requests to speak, Senator Ashford, you're recognized to close. Senator Ashford waives closing. The question before the body is on the adoption of AM2453 to LB969. All those in favor vote yea; opposed, nay. Senator Ashford. [LB969]

SENATOR ASHFORD: I hate to have to do this, but I guess I'll have to ask for, maybe, at some point here in the next...(Laughter) [LB969]

PRESIDENT SHEEHY: Record, Mr. Clerk. [LB969]

CLERK: 27 ayes, 6 nays on the amendment. [LB969]

PRESIDENT SHEEHY: AM2453 is adopted. Next amendment, Mr. Clerk. [LB969]

CLERK: Senator Dubas, AM2452. (Legislative Journal page 944.) [LB969]

PRESIDENT SHEEHY: Senator Dubas, you're recognized to open on AM2452 to LB969. [LB969]

SENATOR DUBAS: Thank you very much, colleagues. This amendment...we talked about this issue on General File. Senator Heidemann and the Appropriations Committee has put in funding that would be taken from the convention center financing program to allow our state colleges to have access to some of this money. I do not disagree that our state colleges need additional funding. And I think our Appropriations Committee recognized that with the money that they provided for our state colleges. But our state colleges are that. They are state colleges. And they are our responsibility, as a state, to make sure that they have the resources that they need. Again, I recognize that they are normally at the end of the line when it comes to providing the types of resources that they probably need. The university gets a lot of attention and I don't have a problem with that. But I think if the state colleges have financial infrastructure issues, we as a state need to step up and be responsible for that. The convention center financing program

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was passed in 1999 to give cities of all sizes across our state access to money to apply for grants, that they could use this money to help...it came from the CenturyLink arena; it's had multiple names, I can't think of them all right now, the Qwest Center, what have you. And part of the agreement when that funding mechanism was put in place was that 30 percent of those sales tax revenues generated from that arena would come out into other cities across the state of Nebraska to allow them the ability to build community centers, museums, those types of things, cultural centers. And it's been a very, very effective program. Our cities have used it a lot. The funds receive annual transfers from the Department of Revenue. Since 2004 there have been 33 projects funded. Last year I carried legislation to help facilitate more usage of the program by lowering the match requirement and including the preservation and renovation of historic buildings. As I researched the resources of this fund, I was told by DED that we could easily award more grants with more appropriated funds and that there is intense competition for these grants. Last cycle received 50 applications, with 20 invited to submit a full application. In fact, an e-mail that I received from DED last year when I was working on my bill, they specifically said: We still would easily be able to award more grants with more appropriated funds. Intense competition is the chief reason that a majority of applying communities do not receive grants. Last year we received preliminary applications from 30 communities that together requested over \$5 million in grants. Of those, 24 sent in a final application. But given the availability of appropriated funds, we could award only \$1.1 million, with just six of the applying communities receiving grants. With more revenues, we would have awarded more grants, because many of the projects-applying communities that were not selected were otherwise worthy of approval. There's been a lot of discussion about the money that is or is not available in this fund, how much money is generated, how much is actually appropriated into the fund. So my point would be if there is more money available that could be appropriated into this fund, it doesn't appear that we would have problems with communities submitting very worthwhile grant applications for that use. This program is really very important to the cities and villages across our state. And so, again, while I understand the needs of our state colleges to be very real, they are just that, state colleges, and we need to give them the resources that they need. I also plan...I have already submitted an interim study resolution that will really sit down and look at this program and look at where it's been and where it is today and where it probably needs to go in the future. We know that additional revenues are going to come into this fund when the Lincoln arena gets on board. It's very clear to me, through the number of grant applications that have been submitted, we are not lacking for grant applications. What we are lacking is that the money is being appropriated into this program in order to be used for what the cities and villages are wanting to use it for. So through my interim study resolution, I'd like to look at where should the future of this program go. Do we need to expand the uses for cities and villages across our state? Are there other things that the cities could be using this money for to help economic development? The Legislative Planning Committee has a subcommittee that's looking at these very issues; I'd like to cooperate with that committee and get their input on this. I think there is potential for more use with

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this fund, and it's time. There never has been a real sit-down type of an evaluation of this program since it was put in place. So since 1999, that's a lot of water and a lot of projects under the bridge. So I do think it's time that we take a very good, close look at how do we move forward with this program. How should we implement? Are there changes that need to be made? Who should oversee the program? I think these are all questions that deserve answers. But at this point in time, I think opening the door to let state colleges use this money would be a mistake. Again, this is something that our cities and villages really work hard to let them know that this program is available. They work hard in helping them apply for these grants. We've encouraged the Department of Economic Development to work hard in promoting this program. And again, just by nature of that e-mail that I read to you, it's obvious that those things are working. Some of the projects that have been funded over the years go from one end of the state to the other. Grand Island used it for the Heartland Events Center, which helped us with the State Fair. Hastings has a museum of natural and cultural history. David City has a municipal auditorium. Humphrey has a community building. South Sioux City has a Scenic Park East Memorial/Interpretive Center. Bancroft has a community building. Randolph has a Carnegie Cultural Center. Tekamah has a library, community center in Cairo, civic center in Beaver City, Dansk Hall community center in Dannebrog. Beatrice has the Carnegie Building Civic and Cultural Center, Opera House in Clarkson, Christensen Field main indoor arena in Fremont, Community Theatre in West Point. There's a very good list of what this program has been used for. So it was hard for me to oppose Senator Heidemann in what he's wanting to do, because, again, I understand where he's coming from and can't say that his request for our state colleges isn't necessary and important. But I just don't think this program should be used for those needs and would respectfully ask the body to support this amendment knowing that I plan on giving it a very, very in-depth look through the interim with the intention of coming back next year with whatever recommendations may come out of that study. Thank you. [LB969]

PRESIDENT SHEEHY: Thank you, Senator Dubas. You've heard the opening of AM2452 to LB969. Members requesting to speak are Senator Heidemann, Senator Harms, Senator Loudon, Senator Coash, and Senator Ashford. Senator Heidemann. [LB969]

SENATOR HEIDEMANN: Thank you, Mr. President and fellow members of the body. I rise in opposition to AM2452 to LB969. This came from a bill that was introduced this year by myself, and it had a public hearing in Appropriations. And it was brought to me because we was trying to find a way to help the college system with these type of facilities. It's been years since we have helped the college system with facilities as such, with gymnasiums, football fields. This bill will allow them to do maintenance. We was told that if we could get some capital construction money, get them up to date, that they would take this bill and keep everything up to snuff and they wouldn't have to come back to us anymore. And I think that in itself is a great thing. I introduced LB994, and it

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had a hearing in Appropriations. And at that time we had one testifier that came in, in support. No one testified in opposition on this bill, on this idea. If this really is something that would be perceived as not to be a good thing, I ask, where was everybody at, at that time? When you look at the state colleges and the facilities that they have now--Senator Harms and I have looked into this--there are needs there. And I understand all of the good that this fund does. Don't get me wrong. I'm convinced that there will still be enough money to do all that good, and there will be enough left over to put some money into this fund to help the three state colleges, at Wayne State, at Chadron, and Peru. This was something that the Appropriations Committee thought long and hard at, some way that we thought that we could help the college system keep things up to date. I think it's important that we move forward with this. I will work with Senator Dubas and Senator Sullivan, who's on the Planning Committee, that we have a lot of interest in the same thing, with the best uses for this money. There will be more money coming into this fund once the Lincoln arena gets up and running. And I think we have an opportunity in the rural parts of our state to do some really good things. And I'm not saying that the money that's being used right now isn't good, but I think we should really look--and this is my opinion--at some more economic development tools. It's always great to get a community center on Main Street Nebraska, but I would personally rather see a business on Main Street Nebraska. I think going into this summer with the interim study with Senator Sullivan and myself and Senator Dubas, we can maybe look at this fund and where this money goes and come up with other ideas. But at this time I rise in opposition to AM2452 with the thought that there will be enough money to do what we want to do with the state colleges and still enough money to do other things with this fund. So with that, I'm in opposition to AM2452 to LB969. [LB969 LB994]

PRESIDENT SHEEHY: Thank you, Senator Heidemann. Senator Harms. [LB969]

SENATOR HARMS: Thank you, Mr. President, colleagues. I rise in opposition of AM2452. I'm very supportive of what this program has done through rural Nebraska. And one of the reasons why I think that there's money left: the Department of Economic Development reviews those proposals, and quite honestly I just don't think that some of the proposals really met the criteria or met the standards that were established. So I think that's part of the problem. And the other side of it is, when you look at the new arena coming in, the additional dollars that we are going to see come in gives us...opens a door for us to have the opportunity to address the issue that the State College System actually has. And, you know, if you have time, you really need to visit the state colleges, and you need to take a look at some of the issues that they have in regard to their maintenance and their upkeep and their facilities. You know, we need to address that issue. And this is a great opportunity for us to do this. I think that it would be appropriate. And I think it would be...would set a fund that would bring forward for the state colleges a point where they could actually make some progress in what they're doing. For every year that we wait on deferred maintenance, the deeper these colleges get into and the more costly it is, and if it can ever get us to a point where we're able just

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to...to just keep abreast with it then we have an opportunity to do some things. And I...when I look at some of the facilities that our students go to in the State College System, it's just not appropriate. And I really believe if we're going to have a State College System and it's going to be an integral part of higher education, then we need to treat it appropriately. We need to find some other source of funding so that when a student enrolls in one of the three institutions that they're not in deficient facilities. And I think that's what this is all about, is just trying to find a way to get them funded so that we can be at least guaranteed that they'll be able to keep up with just the regular maintenance; it's just impossible the way it is now. So based on that, I would simply urge you to not support AM2452. Thank you, Mr. President. [LB969]

PRESIDENT SHEEHY: Thank you, Senator Harms. Senator Louden. [LB969]

SENATOR LOUDEN: Thank you, Mr. President and members. I rise in support of the amendment, AM2452, mostly because your state colleges are just that, they're state colleges, and they have other sources of revenue for their maintenance. First of all, you want to remember we're just...we're putting in this year, what, \$7.5 million or so to Peru down there to do some work on their Oak Bowl. Chadron State College is getting \$6.8 million to upgrade their Armstrong Gymnasium. Several years ago, if any of you remember, but when Kerrey was Governor, he went out to Chadron State College and they found out there wasn't anyplace to exercise and run, so they built that field house out there, and that's been about 15 years ago or so. So, I mean, they're getting stuff built all the time out there. So there are other ways the state colleges get funded. The other thing that they do get funded is these 309 funds which, as Chairman of the Maintenance Committee, we have...we work with. And those are, of course, for all state buildings. But as you look through the list: university at Kearney got new bathrooms, and the university here in Nebraska gets some work done on roofs. And every year we go around and tour and work on different things on a priority list. I've been up to Chadron State College two or three different times when we were looking at roofs. In fact, a few years ago we were looking at the shape of the Armstrong building, to know that there was some problems with the way it was settling and some cracks showing up in the floors and stuff. So state colleges have other ways of funding. Now, what we're using those community...that civic and community fund for, that goes strictly to local governments, comes out of the money that comes through Qwest Center there, some turnback money. And that's the way it was set up in order to get that turnback money for Qwest so that other places in the state of Nebraska would have some resources to help with it. And it's been changed a few years ago to be set up for historic buildings and reconstruction of historic buildings and building new facilities and upgrading some of the things we have. I think one of the towns around here got some library, where they've also put libraries in on that fund, that are eligible for funding out of that fund. That's what it's set up for, and I don't think we should tap into it and start setting it up for state colleges. State colleges are funded by the state of Nebraska, and that's where they should be. If we have a fund set up for other issues, I don't think that this is any time to

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start prying money out of there. As far as saying...when they say that if we set them up a fund out of this they won't come back and ask for any more, you're wrong there. They'll be back when they need some more. Their foundation is set up...Chadron State College is setting up a foundation. They want to build a big ag complex up there, and that's in the works with their foundation. So there's always ways that they have to have needs, and there always will be needs. They'll have some of the dormitories that will need repair work as time goes on. So it isn't something that if you give them this money now you'll never hear from them again. I don't believe that, because I think they'll be back whenever they need something done. And right now we fund the state colleges through the appropriations; that's where it should be. And some of the other issues they need, they can go through their foundations. Chadron State College has a foundation. I'm not familiar with Wayne, and I don't know about Peru down there. [LB969]

PRESIDENT SHEEHY: One minute. [LB969]

SENATOR LOUDEN: But there are other ways for these state colleges to get funding. They have many...the graduating people out of there set up funds. Chadron State College has a football player or two that has golf tournaments and everything else that work quite well for them. So I support the bill Senator Dubas has brought forward...this amendment. I think it's something we need, and I don't think the state colleges should be included in it. Thank you, Mr. President. [LB969]

PRESIDENT SHEEHY: Thank you, Senator Louden. Senator Coash. [LB969]

SENATOR COASH: Thank you, Mr. President. Good evening, members. I stand in support of Senator Dubas' amendment. And it's not because of where the money is going. Our state colleges are certainly worthy of our consideration. They are worthy of our General Funds. They're worthy of our support. They are anchors in the communities where they are. My support of Senator Dubas' amendment comes from my own experience that I would like to share with you. My first two years here I introduced a bill each year that tied these funds to something that I felt was important and something I felt was appropriate to fund through these Qwest...30 percent funds, Qwest Center funds, however they come to be known. So I introduced those bills, one in one year, one in the next, into the Revenue Committee, who promptly killed them. And when I went to the committee members who voted to kill those bills, this is the answer that I was given. They said, look, we appreciate what you're doing; we support your initiatives too. But you're going after a set of funds that were created for one purpose, collected for one purpose, and should be spent for one purpose, and your initiatives, Senator Coash, do not fit those purposes. We created it for a reason, we funded it for a reason, and we'll spend it for that reason. And it took me two times, but I did get the message from the Revenue Committee: Don't bring bills trying to do something with this money other than what it was created for when it was created; don't do it. So I quit bringing those bills. And I've come to realize that that is a good reason to oppose a bill, to say there was a

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legislative intent once upon a time. And not that that can't change, but we have a reason for doing what we're doing, and we would like to continue to do that within those boundaries, and your bill is out of bounds. So with that, I will support Senator Dubas' amendment, and I will yield the remainder of my time to Senator Ashford. [LB969]

PRESIDENT SHEEHY: Senator Ashford, you're yielded 2 minutes 25 seconds, and you are next in the queue. [LB969]

SENATOR ASHFORD: Okay, thanks, Mr. Lieutenant Governor. And I do also rise to support Senator Dubas in her amendment for many of the same reasons that have been discussed. I think Senator Heidemann is on to an idea, however, that we could develop and think about, whereby a community college, a state college, or even a university could partner with a community, a city, and develop some infrastructure utilizing the retail that could develop around that infrastructure. So I think there is a potential turnback use for a partnership with the state college or the university system. But I think it has to be structured differently. I think it would need to be structured in a way that the project itself would be financed by turnback money, you know, much like the Lincoln arena, to a certain extent, which, though it's a city arena, will for the most part or to a great extent become part of the University of Nebraska athletic...for the University of Nebraska athletic teams. But I don't think that's this fund. This fund when we started it, the 30 percent fund, was done to, as has been correctly stated by Senator Dubas and Senator Coash, to very specifically... [LB969]

PRESIDENT SHEEHY: One minute. [LB969]

SENATOR ASHFORD: ...single out worthwhile projects in communities that would have a difficult time being funded otherwise. And Senator Dubas has read the list. I've seen many of the projects. It's, I think, one of the, you know, it's one of these things where, when we didn't have the fund before, many of these projects didn't get funded and weren't funded and were...and many of the buildings that have been...the David City building is fabulous. And I know the South Sioux City and Grand Island...the first project was the Fonner Park/Heartland convention center in Grand Island. That was \$500,000. So I do think there's a significant, really very positive result from our...and from...being from Omaha and having helped work on the Qwest Center at the very beginning... [LB969]

PRESIDENT SHEEHY: Senator, you're now on your time. [LB969]

SENATOR ASHFORD: Thank you...I can tell you that it was...I felt--I don't know if proud is the right word, we're not supposed to be prideful--but I certainly felt warm about the fact that we could, as a result of the activity around the Qwest Center, could actually not only help build a transformational building along the river and that has resulted in the development of an entire part of the city, but that we could turn back to this fund just a

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number of dollars for a number of projects. And I think we're somewhere around 40 projects or somewhere in that neighborhood, now. I think Senator Dubas is just plain right on this one. We can, I think, get to what Senator Heidemann is trying to do with a broader approach to private-public partnership utilizing turnback and developing retail to do public infrastructure. I think that's possible to do and, in some respects, I think it's prudent to do. But that would be an extension of the turnback from what it is now. I would urge the body to...let's just stay the course. Let's do this summer interim study on the use of this money, think about other innovative ways to use turnback. It's great we have three turnback projects now with Ralston and with the Lincoln arena and the Qwest Center. So with that, I would urge the adoption of AM2452. Thanks. [LB969]

PRESIDENT SHEEHY: Thank you, Senator Ashford. Members requesting to speak on AM2452 to LB969, we have Senator Dubas, followed by Senator Lathrop, Senator Carlson, and Senator Schumacher. Senator Dubas. [LB969]

SENATOR DUBAS: Thank you very much, Mr. Lieutenant Governor. I think the first question we have to ask ourselves is, why aren't we taking care of our state colleges? If they are having a problem with facilities and maintenance, why aren't we taking care of them? I think that's a question we really have to ask ourself. I want to be very clear, I stated this in my opening, all of the funds that are being appropriated into this program are being used. Now, the question is, how much money is really out there? How much money is really being generated by this turnback program? That's one of the purposes of the interim study, is to determine those financial resources. As the e-mail said that I read to you, given the availability of appropriated funds, we could only award \$1.1 million. If we had more revenues, we would approve more projects. So again, I think...I liked what Senator Ashford just had to say about an opportunity to have the dialogue through the interim study. Maybe as we look at the additional revenues that will be coming in through the Lincoln arena, getting a good, firm grasp on how much money is being generated right now, why aren't all those dollars being appropriated into this program? Where are the dollars that aren't being appropriated? I think there are a lot of questions. I also think there are a lot of opportunities. But for us right now, I think it's very important that we stay the course and that before we open up the door to other kinds of projects or other entities to have access to this money, I think we have to have a very good, firm understanding of where we've been and where we are at today. And then we can move forward with making good, informed decisions on what are going to be the best uses for these dollars and where can the future take us. These dollars are very important to our smaller cities and villages across the state. We've taken away, you know, state funding for our cities. Their access to resources, especially in smaller communities, is limited. This is one, I think, of two programs that cities and villages have available to them to access needed financial resources to help them with these types of projects. And, again, obviously it's being used; they're using every dollar that's being appropriated. I think that's so important; I don't want you to miss that. It's how much money is being appropriated. There are ample applications; there are more applications

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than there is appropriated funding. So it's not like we have a lack of applications. It's not like the cities and villages aren't using this money, because they are; they're using it to the maximum that's appropriated into the program. So I really don't want you to miss that. I think we have some great opportunities down the road, looking at what are the best uses of this money. Are there ways we can partner with other entities to really take advantage of these dollars and help communities, from the largest to the smallest, across our state? But, I think, to open the door right now would not be a good thing for us to do. And again I want you to ask yourselves the question, why aren't we funding our state colleges the way we need to? And like I said, I agree; I know that the needs are there, that our state colleges are definitely at the end of the line when it comes to receiving the resources that they need. Our state colleges are in some of our smaller cities, so, you know, I understand that. But I just feel very strongly that opening the door to a state responsibility, to a state obligation, to allow them access into these dollars that are very, very important to our cities and villages across the state would be a mistake. And, you know... [LB969]

PRESIDENT SHEEHY: One minute. [LB969]

SENATOR DUBAS: ...allow me that opportunity to have the interim study, so that we can have a good grasp on all of the issues, from financial to usage to the future of this program. Thank you. [LB969]

PRESIDENT SHEEHY: Thank you, Senator Dubas. Senator Lathrop. [LB969]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I'm standing to support AM2452, and I want to do that by taking you back two years, when LB779 was on the floor. You will remember that was a bill I introduced and that ultimately became, or referred to as, the Ralston arena bill, even though it can help any community and not just Ralston. And when I introduced LB779, I think we might have been on Select File, and I secured a commitment from the corner office, if you will, to support LB779 if I would run an amendment to take the 30 percent pot that that would create and return it to the General File (sic). And many of you will recall how that went. I remember distinctly, because Senator Dubas was heckling me while I was making that pitch. But I made a commitment to run an amendment that would return the 30 percent pot to the General Fund and I lost--1 vote for, 48 against--because these turnback projects that we've done have been in partnership with our rural colleagues. Mostly they have been built in larger metropolitan areas, which means we didn't necessarily have an opportunity to secure rural support, or support from my rural colleagues, and so we put the 30 percent pot in. And that probably goes back to Senator Ashford's days. That pot serves an important function, that fund does, and today we are talking about going into that fund for a General Fund obligation. And so we want to do today indirectly what we voted 48 to 0 to do two years ago. And that's why I support Senator Dubas' amendment. I'll also make an observation while I'm at the mike, that when you start to run out of

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resources this is what you do in the appropriations process. That's not a criticism or a negative judgment about my friends on Appropriations Committee and certainly not the Chair, who I respect a great deal. But it says something about where we're at financially in this state when...and this isn't the Corn Board but it's kind of like that, right? We have a designated purpose for this money, and now we're going in there because? Why? We don't have the money in General Funds to do it or we don't want to expend General Fund dollars to do it. And that really tells us something about where we're at and what the debate is going to be about tomorrow. If we are healthy...if we are healthy in meeting our General Fund obligations and not raiding cash accounts, if tax cuts are a good idea, and I've said this on the floor: I'd love to vote for them; I want to see them paid for first. But if they're a good idea, it shouldn't take threats and raiding cash accounts to make it balance. It ought to be a logical thing to do, maybe not necessarily comfortable. But it shouldn't take threats, and it shouldn't take raiding cash accounts for a purpose that is inconsistent with what they were set out for. And so I encourage your support of AM2452. Thank you. [LB969]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Senator Carlson. [LB969]

SENATOR CARLSON: Mr. President and members of the Legislature, there's a part of me that wants to vote for AM2452 which Senator Dubas has brought. District 38 is what I represent. And other than an extension of Central Community College, which doesn't have any resident students, there are no colleges in District 38. But an area/community that has a college has a tremendous asset and an economic advantage. And so I think about that and the lack of a college with resident students in District 38. However, UNK is close, Hastings College is close. And so the communities in District 38 benefit from a college in their area. And in thinking about this amendment and whether to vote for it or against it, I'd like to address a question or two to Senator Heidemann, if he would yield. [LB969]

PRESIDENT SHEEHY: Senator Heidemann, would you yield to Senator Carlson? [LB969]

SENATOR HEIDEMANN: Yes. [LB969]

SENATOR CARLSON: Now, Senator Dubas talked about the statement in her e-mail that said that if there was enough money, there are enough requests to take all--I may be reading into this--but if there was enough money, we could take care of all the requests that have been made for this money. Now, I thought when you introduced this portion of the bill before, you talked about some of the money in this fund goes unused. [LB969]

SENATOR HEIDEMANN: There is \$2.6 million, I believe, that is in the fund. There's another \$1 million that's going to be transferred in and \$1.1 million, \$1.2 million going

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out. I believe if you would ask DED the question, they are funding all the worthwhile projects that they get. [LB969]

SENATOR CARLSON: Well...and the bill itself calls for \$250,000 to be transferred in, in 2012, '13 and '14, and then 2015 and on, \$400,000. Now, currently what facility is contributing to this fund? [LB969]

SENATOR HEIDEMANN: The Qwest Center, for sure, right now. I don't know if there's anyone else up and running. That's...that is it. There is, actually, more money coming in from the Qwest Center because, I believe, a hotel was built around, and that's the reason for the additional revenue coming in, that we could probably do this and not really hurt anything that we have been doing up to this point. [LB969]

SENATOR CARLSON: Well, I think there's some facilities around Ameritrade Park, even though they're not a part of this, that's generating turnback dollars. [LB969]

SENATOR HEIDEMANN: Yes. [LB969]

SENATOR CARLSON: Now, we have the Lincoln arena that, hopefully, will be a reality--no reason to think it won't be--and the Ralston arena. So I asked you this before, but I believe you believe that with these other two--and there could be more--that enter the picture with turnback taxes, that there will be sufficiently more money than what we have coming into the fund now that not only could take care of the present needs but also take care of what you've requested for state colleges. [LB969]

SENATOR HEIDEMANN: I think we have a challenge but an opportunity...a challenge and an opportunity, because there is going to be more money coming in. We need to look at this fund and see how it can help our part of the world, Senator Carlson. We have an opportunity here; I think it's very important we don't lose that opportunity. [LB969]

SENATOR CARLSON: Well, and I think referring even to what Senator Lathrop said, that we have a tendency to try to raid funds when we're maybe not in the best economic circumstance that we'd like to be in,... [LB969]

PRESIDENT SHEEHY: One minute. [LB969]

SENATOR CARLSON: ...on the other hand, when we have a fund that's bringing in money now and there's every reason to believe it's going to bring in more money in the future, I don't think it's bad practice or bad policy to figure out what other ways can we use these dollars to benefit our state. And I think that's part of the rationale in requesting this money. [LB969]

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SENATOR HEIDEMANN: Very much so. In our part of the world, the state colleges are very important. Those kids that go into those state colleges tend to want to go back and settle and be productive citizens in our part of the world. [LB969]

SENATOR CARLSON: Okay, thank you, Senator Heidemann. Thank you, Mr. President. [LB969]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Senator Schumacher. [LB969]

SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. One advantage of speaking late in the discussion on a bill is that most everything that needs to be said has been said. But to summarize a little bit my feelings on this, number one, several senators have said this was a deal. The Qwest Center was financed, some other projects were financed, and the smaller and middle-sized communities all across the state, regardless of whether they had a college or a youth development center or a whatever, were going to have access to these particular funds. And some of them haven't had their access to the particular funds yet, in fact, most of them haven't. Most of our 500 communities that don't have a state college are still in line and are waiting their turn at some of these funds. So that's the deal that was made. And whether it was a deal as a contract or a deal as an understanding with the communities of outstate Nebraska and greater Nebraska, it was the understanding. Secondly, this fund--and I know this from personal experience--has the magical quality of being able, in a community that wants to organize its money and invest in itself, of making things possible and giving an incentive to that organization. There can be no better example than what happened in Humphrey, where they needed a new community center, where 90 percent of the money was raised locally, but they needed just a little extra push to finish the project and got \$100,000 out of this. This is a worthy mobilization of capital. The state colleges, if they want to, they have communities that they are part of and that can, through interlocal agreements, access this fund this way, as Senator Ashford suggested. And finally, if we deem the state colleges to be appropriate vehicles to remain in existence, then why aren't we funding them properly through the mechanism of the state budget rather than raiding these particular funds? You know, today we've seen ourselves maybe take on a new name, and that is raiders of the vanishing cash. As such, we're looking anywhere we can to find extra money, to grab something from this fund or that fund, to make an excuse why maybe we should divert money from this particular fund to that particular cause. And that happens every time that you are short on cash. There is no free lunch. There is no free lunch in any of this. You grab some cash from this fund to pay for things at state colleges or youth development centers or anything else that deems to be worthy. What you're basically doing is levying a tax on those communities that have yet to have their fair share of this fund yet to access it. And every time you get tight and you raid things, it's not a sign of health. A sign of health is when you can back up and look and say we're meeting our needs, we can declare a dividend in the form of tax credits or tax relief, and then move forward without

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jeopardizing programs and without jeopardizing the security of our state finances. So I stand in support of the original intention of this particular fund and Senator Dubas' AM2452. Thank you. [LB969]

PRESIDENT SHEEHY: Thank you, Senator Schumacher. Senator Harms. [LB969]

SENATOR HARMS: Thank you, Mr. President, colleagues. I just wanted to talk a little more about this fund, in regard to the Civic and Community Center Financing Fund. The uncommitted funds that are in this now, colleagues, is a little over \$2.4 million. And they're about to transfer in a little over \$1 million because of LB968. So that bottom line will be about \$3.2 million. And as we watch this continue to grow, and with the new auditorium coming on deck, there will be much more dollars coming in here. And I think it really is appropriate for us to use these funds. I don't call it raiding it. I think we're trying to find a solution to an issue that the state colleges have. I heard the question about why have the state colleges fallen behind. I don't know what the answer to that is. I've been here six years, and this is the first time that I've been really involved in trying to help the State College System try to resolve some of their issues. I mean, that's something that I think they're going to have to look at. But I believe that system is worth trying to help. I think it's important for us. It has an impact in rural Nebraska. It has an economic impact. And as I said before, there's going to be a pretty good balance left here. And as I stated before, in my previous comments, that one of the reasons why some of these dollars have not been used is because the projects have not been...some of them have not been appropriate. So I would urge you to oppose AM2452 of Senator Dubas'. And I would appreciate that support. Thank you, Mr. President. [LB969 LB968]

PRESIDENT SHEEHY: Thank you, Senator Harms. Senator Heidemann. [LB969]

SENATOR HEIDEMANN: Thank you, Mr. President and fellow members of the body. I want to rise up one more time in opposition to AM2452. And I just once again want to stress the importance of the college system to our part of the world. We have a fund that is helping build the Qwest Center and the Lincoln arena that the University of Nebraska will play basketball at. Creighton plays basketball at the Qwest Center. UNO will play at Ralston. I think this is a great use of funds, to help the college system with the same type of facilities that we have helped Lincoln and Omaha and Ralston with. And I was part of that. Senator Lathrop just turned around. I was part of that, to help that. And now I'm asking you for your help when it comes to State College System, because we need help for something that's very important for our part of the world. I'm going to read just a few things that happen at Chadron State and at Peru State and at Wayne State. This is not just a college thing; this isn't a community thing. There are people that come from rural parts of Nebraska that participate in things that happen at each and every one of these facilities that we will build. At Chadron State, the Chadron community recreational basketball; Chadron High School Wrestling Invitational; Chadron peewee wrestling; high school track meets; Hoop Shoot Basketball

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Tournament; Chadron Sharks swim community meet; community utilization of the swimming pool; youth camps including basketball, football, softball, wrestling, track, and volleyball; Scholastic Day; Rotary Invitational Track Meet. At Peru State, you have youth basketball, baseball, softball tournaments; high school practices and competition; community health fairs; career fairs; power lifting meet; high school postseason tournaments; American Legion and recreational practices; community use of the fitness facility and fitness classes; receptions and parties for community members; and booster club events. Wayne State hosting of playoff football games; high school track meets, indoor and outdoor; American Legion Baseball; Wayne High School's Northeast Nebraska Shootout; area Scouting and youth groups; family events; children parties; community memberships to the rec center; senior wellness program; high school football games; and it goes on and on and on. They not only are for our state colleges, they partner with the community and far beyond. We have a opportunity to help our state colleges, which are very important to our part of the world. I think this is a very appropriate use of this money out of this fund. I rise in opposition to AM2452, and I ask that you do also. Thank you. [LB969]

PRESIDENT SHEEHY: Thank you, Senator Heidemann. Seeing no additional requests to speak, Senator Dubas, you're recognized to close on AM2452 to LB969. [LB969]

SENATOR DUBAS: Thank you very much, Mr. Lieutenant Governor. For this last application process for 2012, DED received 50 responses. Of those 50, they invited 20 to submit full applications that are due at the end of this month. It's estimated there could be approximately \$1.1 million allocated for these grants. At the risk of repeating myself, I will repeat myself. They can easily award more grants with more appropriated funds. The question is, why aren't more of those available funds being appropriated into this program so they can be used? Grant applications are being turned down, not because they aren't good applications, not because they don't have merit, but because they don't have resources to fund all of the applications. This money is vitally important to our cities and villages across the state. Quoting an article that Senator Ashford was interviewed for: The turnback sales tax statute is a tool that doesn't raise taxes, encourages private investment, and involves local political subdivision investment. Legislators could see the desire and the need for improvements in facilities throughout the state for which there did not seem to be adequate resources to fund these types of facilities. Again, I do not question the need that our state colleges have and all of the opportunities that they afford their communities and surrounding areas. Our local high schools do very much the same thing. Those buildings in our small communities are used every weekend of the year, just about, for various things. Our state colleges are simply that. They are our state colleges. And we have dropped the ball. We have not been responsible in providing them the needed resources. As I said, I introduced an interim study resolution because it's important that we look at this program. It has not been looked at since its inception in 1999. And it's time that we really evaluate it, that we fully understand the financial resources that are available: how they are

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appropriated; why they are appropriated. What happens to those dollars that aren't appropriated? What do we need to do with the future dollars and financial resources that are going to come into this fund? Are there opportunities for us to maybe partner with those state colleges to do things? Are there opportunities for cities and villages to expand the use of this money? But this money...our cities' and villages' access to financial resources like this is very limited. This is a program that is very important to them. It was brought up earlier and I would like to speak to the fact that, you know, the League of Municipalities did not come in and testify on this bill. And believe me, they are feeling very much regret for letting that happen. And it was simply an oversight on their part, because they have been at the table anytime this issue has been discussed. Senator Coash alluded to that. They have been very protective of this fund because they know the value and the importance... [LB969]

PRESIDENT SHEEHY: One minute. [LB969]

SENATOR DUBAS: ...to our cities and villages. So don't take the fact that they weren't there as a silent okay for what's going on here, because it certainly is not. And they've been working very hard to try to, you know, visit with all of you to express their concerns. So again, I'd like you to afford me the opportunity to spend time on this issue this summer, come back next year with some, hopefully, some very good, constructive ideas about how we make the most efficient use of this program and good, solid answers to questions about financial resources that are available, the type of money that's being generated, and how that money is being used and appropriated. And I think that is, you know, if you don't think of anything else as you get ready to cast your vote, remember, they could easily award more grants with more appropriated money. And it's not that the applications aren't good, qualified... [LB969]

PRESIDENT SHEEHY: Time, Senator. [LB969]

SENATOR DUBAS: ...applications. Thank you. [LB969]

PRESIDENT SHEEHY: Thank you, Senator Dubas. You have heard the closing of AM2452 to LB969. The question before the body is on the adoption of AM2452. All those in favor vote yea; opposed, nay. Senator Dubas. [LB969]

SENATOR DUBAS: I'd like a call of the house, please. [LB969]

PRESIDENT SHEEHY: There has been a request for the call of the house. The question before the body is, shall the house be placed under call? All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB969]

CLERK: 35 ayes, 0 nays to place the house under call. [LB969]

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PRESIDENT SHEEHY: The house is placed under call. All unexcused senators please report to the Legislative Chamber. All unauthorized personnel please step from the floor. The house is under call. Senators, please record your presence. Senator Dubas, all members are present or accounted for. How would you like to proceed? [LB969]

SENATOR DUBAS: Roll call vote in reverse order, please. [LB969]

PRESIDENT SHEEHY: There has been a request for a roll call vote in reverse order. Members, you're voting on the adoption of AM2452 to LB969. Mr. Clerk. [LB969]

CLERK: (Roll call vote taken, Legislative Journal page 1005.) 20 ayes, 22 nays, Mr. President, on the amendment. [LB969]

PRESIDENT SHEEHY: AM2452 is not adopted. The call is raised. Next amendment, Mr. Clerk. [LB969]

CLERK: Mr. President, Senator Flood would move to amend, AM2470. (Legislative Journal page 952.) [LB969]

PRESIDENT SHEEHY: Senator Flood, you're recognized to open on AM2470. Call is raised. Senator Flood, you're recognized to open on AM2470 to LB969. [LB969]

SPEAKER FLOOD: Thank you very much, Mr. President, members. This is the final component on the sheet that I handed out yesterday. And as you'll note, Sections 2 and 6 of the Appropriations Committee amendment, AM2068, includes changes to fund transfer language to harmonize the statutes providing for the closeout of the Ethanol Production Incentive Cash Fund, otherwise known as EPIC. AM2068 authorizes a transfer of up to \$3.8 million on or before December 31, 2012, to satisfy any remaining obligations of the EPIC Fund. It is now estimated by the Department of Revenue and the State Budget Division that less than \$1 million will be needed for this purpose. In fact, they are currently estimating there's about \$700,000 in liabilities, and we're leaving \$1 million in. This amendment reduces the authorized General Fund transfer to the EPIC Fund of General Funds by \$2.8 million. I want to be very clear on this--and I know that Senator Hansen...or Senator Carlson and I have visited about this--this is not any of the corn checkoff money that was paid into the EPIC Fund by corn growers. This is General Fund money that was set to go to the EPIC Fund on an earlier projection. We're simply authorizing the transfer of \$2.8 million. Instead of going from the General Fund...it reduces the authorized General Fund transfer to the EPIC Fund by \$2.8 million. So we're not going to send the General Funds that we had talked about sending on earlier projections because the fund doesn't need that to operate. These are not corn checkoff dollars. These are General Fund dollars. And I would give the balance of my time to Senator Carlson so that he can also weigh in on that. Thank you. [LB969]

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PRESIDENT SHEEHY: Thank you, Senator Flood. Senator Carlson, you're yielded 8 minutes and you are next in the queue. [LB969]

SENATOR CARLSON: Okay, thank you, Mr. President. Thank you, Speaker Flood. And I would like to address Speaker Flood a question or two if he would yield. [LB969]

PRESIDENT SHEEHY: Senator Flood, would you yield to Senator Carlson? [LB969]

SPEAKER FLOOD: Yes. [LB969]

SENATOR CARLSON: This is really to get this on the record because the corn checkoff is going to continue until September 30, 2012. As a part of that, the first sale on corn, the checkoff is seven-eighths of a cent per bushel, and that, along with General Fund dollars, has been the source of funds for the EPIC Fund. And so I know that we discussed this. But it is very important that the fact is that none of these checkoff dollars going into that fund would be transferred out to the General Fund. [LB969]

SPEAKER FLOOD: Right, these are General Fund dollars coming from the state's General Fund and we're going to reduce the authorized General Fund transfer to EPIC by \$2.8 million, allowing that \$2.8 million to stay in the General Fund. [LB969]

SENATOR CARLSON: And then the original plan was that the balance that would be left in this EPIC Fund, and I think the date is probably October 1 because it ends on September 30, would be split, half coming back to the General Fund and half to the Corn Checkoff Fund. But with the accounting that's going to take place, there will be no corn checkoff funds that come back to the General Fund. [LB969]

SPEAKER FLOOD: Not under what I'm doing here, Senator Carlson. [LB969]

SENATOR CARLSON: Okay. [LB969]

SPEAKER FLOOD: I want to make that very clear because I didn't think that would be palatable or right in this amendment. [LB969]

SENATOR CARLSON: Thank you for that, because that would be very, very important to the corn producers in the state to have the assurance that this is the way this fund would be handled. And with that, I support AM2470. Thank you. [LB969]

PRESIDENT SHEEHY: Thank you, Senator Flood. Thank you, Senator Carlson. Senator Carlson, you are next in the queue. Did you want to waive? Senator Carlson waives. Seeing no additional requests to speak, Senator Flood, you're recognized to close on AM2470. Close on...Senator Flood waives closing. The question before the body is on the adoption AM2470 to LB969. All those in favor vote yea; opposed, nay.

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Record, Mr. Clerk. [LB969]

CLERK: 42 ayes, 0 nays on adoption of the amendment. [LB969]

PRESIDENT SHEEHY: AM2470 is adopted. Next amendment, Mr. Clerk. [LB969]

CLERK: Mr. President, the next amendment I have, Senator Lautenbaugh, but I have a note that he wishes to withdraw AM2497. [LB969]

PRESIDENT SHEEHY: AM2497 is withdrawn. [LB969]

CLERK: Mr. President, Senator, just so I'm clear then, there was an amendment filed just a little bit ago. That goes away, right? Okay. Senator Dubas would move to amend with AM2542, Mr. President. (Legislative Journal page 1006.) [LB969]

PRESIDENT SHEEHY: Senator Dubas, you're recognized to open on AM2452 to LB969, AM2542. [LB969]

SENATOR DUBAS: Thank you, colleagues. Excuse me one minute while I pull it up. While I'm finding it, what I'm seeking to do is allow municipalities only to continue using this fund for the next several years and then let the state colleges come in at the later date. Again, I just want to stress to you how important this particular program is to our municipalities. And this would give us time, again, to conduct the interim study, to really evaluate the program, to see what types of changes need to come down the pike, to see if really having the colleges have access to this fund would be an appropriate use of the money. This would give us time to really have a complete and full evaluation of the program. So I'd ask your consideration of this amendment, give me time to have my interim study this summer, allow us to move forward then. You know, I spoke earlier about how important this program is to our cities and villages, the municipalities across the state, that they really have few financial resources available to them outside of taxes. And with the limited resources in some of our smaller communities, they have even less available to them. We aren't looking at a shortage of applications. We aren't looking at a shortage of qualified applications. What we're looking at is the amount of money that's being generated by this fund being appropriated into this fund. And it's very clear to me, based on the information that's been shared with me, that all of the money that's being appropriated is being used. And if there were more money appropriated into the fund, that would also be used too. So I think by allowing us to keep this for 2012-13 and '13-14, continuing to allow our municipalities to use this money, have the interim study, see where we need to go from there. I think having the conversation about having our state colleges have access to this money is an important one. But I also want to stress again that these state colleges are our state's responsibility. It's up to us. If we aren't living up to our responsibility, we need to know why we aren't. We only have three state colleges in our state. And I know what an asset

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that they are to their communities and I know how much the local communities, as well as the surrounding areas, do use them. But they also have, either through their foundations or other...they have other means of generating money. So I very much supported what the Appropriations Committee put out as far as providing extra dollars to our state colleges, helping them with their facilities. It's something that I think needs to be ongoing from the state's perspective. And I think by opening the door to this, allowing them access to this fund is really opening the door to a lot of people coming forward saying, you know, we could use those dollars too. As we continue to look at when the Lincoln arena comes on board, other additional revenues that are generated for this project come on board, we do need to have a very thorough and complete study of past, present, and future how this program has worked and where it needs to go into the future. And so I would ask for your consideration of this amendment. This would not completely shut down the state colleges, but it would give us the time that we need to move forward with the study and with the understanding of what needs to be done with this program. Thank you. [LB969]

PRESIDENT SHEEHY: Thank you, Senator Dubas. You've heard the opening of AM2542 to LB969. Members requesting to speak: Senator Heidemann, followed by Senator Schumacher, Senator Harms, and Senator Sullivan. Senator Heidemann. [LB969]

SENATOR HEIDEMANN: Thank you, Mr. President and fellow members. I do rise in opposition, which I think a lot of you would understand and probably believe that's what I was going to do, to AM2542. We've done this, we've been there, we've said no. It's late at night. I don't think we need to have a lot more discussion. If there is an interim study and if it is decided down the road that there is better use of these funds, 25 votes in this body next year will buy you a lot. We've passed this on General File. There was discussion. We defeated this once. This is the same thing. Been there, done that. I believe that the money that is in there right now, that DED is funding everything that they think is worthwhile as they see it now. There will be more money coming into this fund. I think we have, as I said before, challenges and opportunity in what to do with that money. But at the present time, at the present time I think this is a very appropriate use for money. And we've had discussion about these are state colleges. And there are challenges out there, but I have never...I've been here eight years, nobody has stood up and said what can we do for the state colleges, they have needs. I've not come across that legislation in my eight years. They are very important to our part of the world. We have an opportunity to help something that is very important to our part of the world. And if down the road, if we can find economic or other uses for this fund, we could go back and we can address that. At the present time, this is a very good use for this fund. We said no once to the same thing, and I ask you to say no again. Thank you. [LB969]

PRESIDENT SHEEHY: Thank you, Senator Heidemann. Senator Schumacher. [LB969]

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SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. Would Senator Dubas yield to a couple of questions quickly? [LB969]

PRESIDENT SHEEHY: Senator Dubas, would you yield to Senator Schumacher? [LB969]

SENATOR DUBAS: Yes, I will. [LB969]

SENATOR SCHUMACHER: Senator Dubas, basically, what you're asking is that the old rules remain in effect until the end of fiscal year '13-14. [LB969]

SENATOR DUBAS: Correct. [LB969]

SENATOR SCHUMACHER: How many communities were in line under the old rules and rejected because there wasn't an appropriation? I think you had numbers before and I'm just trying to recollect. I think 20 applied or... [LB969]

SENATOR DUBAS: There were in this last grant cycle, which will conclude the end of this month, there were 50 initial responses. Twenty were invited to submit a full application because they're vetted. The original applications are vetted and then they're...the ones that seem to fall under the qualifications are invited to submit a full application and then DED will evaluate those. DED is estimating they will have about \$1.1 million allocated, appropriated. And if it holds true, as the way it's happened in the past, all of that money will be used. [LB969]

SENATOR SCHUMACHER: So right now as we're thinking of changing the rules there are 30 communities standing in line already? [LB969]

SENATOR DUBAS: There are 20, 20. [LB969]

SENATOR SCHUMACHER: Twenty. Okay, thank you very much. Members of the body, I think it's fair to let those communities already in line operate under the old rules while we study this thing. They're already in line and there's...it seems a little unfair to change the rules in the middle of the game. Thank you. [LB969]

PRESIDENT SHEEHY: Thank you, Senator Schumacher. Senator Harms. [LB969]

SENATOR HARMS: Thank you, Mr. President and colleagues. I rise in opposition to AM2542. All this does is just simply delay the very thing we're trying to resolve for the state colleges. For every year we wait, those maintenance costs, those remodeling costs and whatever facility costs they're looking at go up. And so what happens to us then, they can do just less for the amount of money we're going to be able to give them. So I rise in opposition of this. I think that we're trying to help the State College System

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and this is one of the best ways we can do that. And if time, after they do their study and review, if they find a better way to do this we can always come back and fix this. But by just delaying it two years, I oppose that because it just drives them deeper into the very thing we're trying to resolve. So thank you, Mr. President. [LB969]

PRESIDENT SHEEHY: Thank you, Senator Harms. Members requesting to speak on AM2542 to LB969, we have Senator Sullivan, followed by Senator Heidemann, and Senator Louden. Senator Sullivan. [LB969]

SENATOR SULLIVAN: Thank you, Mr. President. You know, it's kind of a revolving door that we have here. A bill comes up and we walk through the process and we have the discussion and then we come back around on Select File and we walk through the door again. And that's a good thing. I guess that's why we have the potential for three rounds of debate. And as I've thought through this process and listened to both Senator Heidemann and Senator Dubas, very passionate about this issue, and I think, quite frankly, all three of us are on the same page. We desperately want economic development for our rural communities. And I certainly understand what Senator Heidemann is saying about that. And, of course, the state colleges are in rural communities in rural Nebraska. And so this has the potential to help. But I have to stand in support of AM2542 and I think this is a reasonable compromise. It still leaves the door open for state colleges to get some help down the road. It's not like they are in crisis mode. Granted, they've had these maintenance issues on the drawing board, on the table for quite some time, and they will still continue to have them and perhaps maybe they will escalate in needs. (Laugh) But, believe me, the needs are in our small rural communities, too, and maybe more monies will come in. But I will also...I think about the proposed interim study of which I want to be a part of and Senator Heidemann has indicated he does too. Perhaps this will open up the door to even more opportunities of how these funds can be used for rural communities. So I don't want to close the door on that either. So I think this is a good compromise. I don't deny the fact that state colleges need help. But we will help them down the road if we pass this amendment. Thank you. [LB969]

PRESIDENT SHEEHY: Thank you, Senator Sullivan. Senator Heidemann. [LB969]

SENATOR HEIDEMANN: Thank you, Mr. President and fellow members of the body. There's been talk about how many people...how many communities apply, how many get funded, how much money we actually let them appropriate. We in Appropriations, year after year, we fully fund the DED's request. And they request, in my opinion, they request that amount because that's the worthwhile amount of projects that come in. And I would have to think that if you probably got ahold of their list, how they got from 50 to 20, you might have to look exactly what was in the 30 that didn't get accepted. We've had this discussion. If it's the intent that we should wait for the interim study of what to do, I think we should wait for the interim study before we do anything like AM2542. Let's

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wait and see what the interim study does and then come back. Now that would be the way that I would like to see things done. And that's what we indicated on a vote that we took just very briefly, a little short time ago. There are challenges and opportunities here that we have before us with this fund. But this is an opportunity that we have before us that we decided to fund on General File; that we decided that, no, we didn't want to not do this when we voted down Senator Dubas' amendment before. And we see it once again. It's late at night, it's time to go home, just vote no. [LB969]

PRESIDENT SHEEHY: Thank you, Senator Heidemann. Senator Louden. [LB969]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. I thought it was fairly early yet, still daylight out, so I guess don't need to worry about going home just yet. What I would...I get back to this LB309 Task Force again, and I don't know how many of you are familiar with that, but that was tobacco money that's given out and the task force uses that to do various repair work and bring different buildings up-to-date that belong to the state of Nebraska. The first thing they went around was to get all the buildings so that they would be handicapped accessible. And that's what...that kind of money did a lot of that. They do a lot of air-conditioning work, put in chillers, and also do roofing. Now as they go through their priority list, as usual, they never have enough money for all the people that put in requests. And if these colleges have another revenue stream, I don't know if their priorities will be as high as other buildings. So just because you're setting up another stream for the colleges doesn't necessarily mean they're going to get more money. Chances are they may be on the...lower on the priority list on the LB309 Task Force. So I would point that out. And Senator Dubas' amendment here just delays it all for a period of time, which isn't that bad. I don't see anything wrong with doing something like that. So I think that's an alternative to have your study to see exactly where we're at between the LB309 Task Force money and the money that will come in from the community, civic and community development cash funds. So with that, I would support the amendment. But I want to point out that there is a chance that there could be a different priority listing on the LB309 money. Thank you, Mr. President. [LB969]

PRESIDENT SHEEHY: Thank you, Senator Louden. Senator Karpisek. [LB969]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. I think if the first amendment would have been...the vote would have been taken at a different time it might have come out different. But that's the way things fall here. People are gone, don't know exactly where, but I don't know. Anyway, I think it would have turned out different. My question is, is if this is so important, and the community colleges are important, I will grant you that, why can't we just put money in the budget to give them money? Maybe in a little bit I'll have Senator Heidemann...Senator Heidemann, would you yield to a question, please? [LB969]

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PRESIDENT SHEEHY: Senator Heidemann, would you yield to Senator Karpisek?
[LB969]

SENATOR HEIDEMANN: Yes. [LB969]

SENATOR KARPISEK: Thank you, Senator Heidemann. My question is, is why don't we just put money in the budget to go to the community colleges? [LB969]

SENATOR HEIDEMANN: I think you mean state colleges. [LB969]

SENATOR KARPISEK: State colleges, I'm sorry, yes. [LB969]

SENATOR HEIDEMANN: You have been here for I think six years now. [LB969]

SENATOR KARPISEK: Right. [LB969]

SENATOR HEIDEMANN: It's been a tough economic time. It's been tough budgeting. If we would try to do this I...looking at all the other priorities with child welfare, with Beatrice and other things, I don't know if this would rise to the level of that by any means. And I don't think we would have room in our budget to actually do this. We have found a unique way to help the state colleges without going into the General Fund.
[LB969]

SENATOR KARPISEK: Okay, thank you. I guess my thought is this is important, I will agree. I think there's a lot of money in the budget. I don't know (laugh) how we can say that there isn't room in the budget because there's a lot of things to look at in the budget. And if this is that important, then things have to give. And I know that's what you guys do in Appropriations Committee, I know that. I know that you give and take and I get that. Twenty-five million for Innovation Campus last year, that was important. What's more important? Seventy-one million dollars this year for the university, it's important stuff, but where does it rise to? There are a lot of things in the budget and I think that we need to look at what is important, how are we going to go about this? Hey, I think this is a good way that maybe Senator Heidemann has thought of to get some money there. But I don't like the way that it's working. If this is the way to do it, then why can't we do something else? Why doesn't someone else try to raid this fund--and I am going to say raid the fund--find another way to get ahold of this money? I've heard a lot of rhetoric today or this evening about they need help, this industry needs help. It sounds a lot like something else I heard about, but it's different. And it is different because these are state colleges. But I think once in a while we better listen to ourselves. It's about jobs, it's about people, Nebraskans. I think it sounds very much the same. And I know that the people that said it probably don't think so, but I sure do. Let's figure out a way to get the state colleges some money. [LB969]

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PRESIDENT SHEEHY: One minute. [LB969]

SENATOR KARPISEK: If we have gotten so far behind on our watch, what in the heck have we been doing? I know that it's been tight around here. We cut a lot out last year. I know last year wouldn't have been the time to do it, but I think this year sure is. Why don't we just put an amendment to take this out of the budget now and let's do it on the floor, because I know we can't do that. We can, it won't work. I've just heard a lot of things here and I think we're dancing around the issue. There's more than one big gorilla in the room. Thank you, Mr. President. [LB969]

PRESIDENT SHEEHY: Thank you, Senator Karpisek. Senator Wallman. [LB969]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. Here we go round and round, huh? Don't you love that song, here we go round and round? Folks, that's what we're doing. And when I came in here we inherited a lot of money, because I remember we could go across the state and our General Fund or rainy day fund was higher than it had been in I don't know how years. And so what did we do with that? The recession hit, but we were also some of the problem lowering that down. There's a lot of communities that have used this in the past. And if you're going to rob a fund from here or there, you know, the Heartland Event Center, Grand Island; Museum of Natural and Cultural History, Hastings; Arnold Community Center, it goes on and on; White Horse Museum at Stuart; Amphitheater, Walnut Park, Papillion. So this pretty well goes across the state and it helps rural America, rural United States citizens in Nebraska. So I want to thank Senator Dubas for bringing this forth. I know it seems like somebody wants to go home, but I don't consider it late on the farm, Senator Heidemann. We go a couple hours later usually. (Laugh) So I would urge you to support this amendment. Thank you, Mr. President. [LB969]

PRESIDENT SHEEHY: Thank you, Senator Wallman. Seeing no additional requests to speak, Senator Dubas, you're recognized to close on AM2542. [LB969]

SENATOR DUBAS: Thank you very much, Mr. Lieutenant Governor. I didn't drop this amendment to make anybody mad or to keep us here longer. I dropped this amendment because this program is so important to our communities, is so important to our communities. You know, we started this discussion on General File with the agreement or with the idea that Senator Heidemann and I would have a conversation between General and Select and see if there was any common ground. And we had our conversation and I think Senator Sullivan said it--she was a part of that conversation--we really aren't very far apart. We basically all want the same things. We want good things to happen in our communities across the state. And Senator Heidemann is very passionate about this. And again, I can't completely disagree with why he wants this money, because our state colleges do need additional resources. And we have dropped the ball in not providing those resources for them. But, you know,

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it was obvious that there wasn't common ground, there wasn't anything for us to agree on, to move forward. And so I proceeded to tell him that I would be introducing an amendment to strike this from the budget bill, and I did. And we had conversation. And as Senator Karpisek said, if this vote was taken maybe at a different time and a day, it would have turned out different. But that's the way that things work in the Legislature. But I just want to again reemphasize how important this program is to our communities. And having the interim study to understand what we need to do, where we've been, where we're going, I think it's better to have that interim study and make changes from the interim study than to make changes, then have the interim study and try to come back and make changes. But, as Senator Heidemann also said, 25 votes at any given time can make changes to anything. And so I am committing to following through with the interim study and looking at this program. And hopefully, we come out making it better and stronger and more effective and ultimately at the end of the day providing good resources to our cities and villages all across the state that they can have access to. I've repeated myself multiple times. I don't understand, you know, why more money hasn't been appropriated. All of the correspondence I've had has told me more applications would have been funded had there been more money. Some have said there haven't been adequate, good enough grant applications, but that's not my understanding. My understanding is there has been a lot of good grant applications that just didn't receive funding because the money wasn't there. So I think there are some things we need to be much clearer on as far as the money that's being generated and how it's being appropriated and who's making that request and how it all comes together to make a complete picture. But again, I didn't introduce this amendment because I wanted to antagonize anybody in here but just to really emphasize the fact that I understand how important this program is to our communities and how much it has benefited them. And I would not have been able to feel good about myself had I not given it every effort that I had available to me to make sure that we continue to move forward and make sure that this program stays sound and available for our communities all across the state. So with that, I would close. And I would ask for a call of the house and a roll call vote in regular order, please. [LB969]

PRESIDENT SHEEHY: You have heard the closing of AM2542 to LB969. There has been a request for a call of the house. The question is, shall the house be placed under call? All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB969]

CLERK: 36 ayes, 0 nays to place the house under call. [LB969]

PRESIDENT SHEEHY: The house is placed under call. All unexcused senators please report to the Legislative Chamber. All unauthorized personnel please step from the floor. The house is under call. Senators, please record your presence. Senator Cornett, Senator McCoy, the house is under call. Senator Cornett, Senator Mello, Senator McCoy, the house is under call. Senator Dubas, all members are present or accounted for. Mr. Clerk, there's been a request for a roll call in regular order. [LB969]

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CLERK: (Roll call vote taken, Legislative Journal pages 1006-1007.) 19 ayes, 22 nays, Mr. President. [LB969]

PRESIDENT SHEEHY: AM2542 is not adopted. The call is raised. [LB969]

CLERK: I have nothing further on the bill, Mr. President. [LB969]

PRESIDENT SHEEHY: Senator Flood, you're recognized for a motion. [LB969]

SPEAKER FLOOD: Mr. President, I move LB969 to E&R for engrossing. [LB969]

PRESIDENT SHEEHY: You have all heard the motion. All those in favor say aye. Opposed, nay. LB969 advances. [LB969]

CLERK: Mr. President, with respect to LB1072, I have no amendments to the bill. [LB1072]

PRESIDENT SHEEHY: Senator Flood, you're recognized for a motion. [LB1072]

SPEAKER FLOOD: Mr. President, I move LB1072 to E&R for engrossing. [LB1072]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB1072 advances. Mr. Clerk, we will now move to items under General File, 2012 senator priority bills, LB959. [LB1072 LB959]

CLERK: LB959 is a bill by Senator Janssen. (Read title.) Bill was introduced on January 11 of this year, at that time referred to the Business and Labor Committee, advanced to General File. There are committee amendments, Mr. President. (AM2010, Legislative Journal page 797.) [LB959]

PRESIDENT SHEEHY: Senator Janssen, you're recognized to open on LB959. [LB959]

SENATOR JANSSEN: Thank you, Mr. President and members. I'll be brief. LB959 is a proposal to provide immunity for employers who give truthful employment information to prospective employers. This is commonly known as the job reference immunity bill. I bring this bill for your consideration because I think the information is critical to a good work force and full disclosure of an employee's skills and abilities are important to that work force. Many companies are reluctant to offer prospective employers any information about current or former employees beyond what is sometimes called NRS, or name, rank, and serial number. Good employees are held back by these policies. Pertinent and important information is withheld because employers have decided that any information beyond the name, rank, and serial number is not worth the possibility of

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future litigation. As many of you know, I own a medical staffing company in Fremont. In this field of business you want to know as much as you can about an individual before you put them into a hospital setting. In my particular case and the genesis of this bill was a nurse that I had placed...or my company had placed into a hospital facility, a children's hospital in the Colorado area. We did multiple reference checks on this individual and just came back with our standard name, rank, and serial number. We went a little further and did a background check on this employer (sic) and, thankfully, before they showed up at this children's hospital, we uncovered they had a felony child abuse on their record. And that was a little bit chilling and we're glad that we caught that. And then I talked to some people from our community and the hospital community and it turns out that Nebraska is one of the few states to not have these types of immunities. Job reference protections...employers rarely will provide information beyond the dates of termination. And that's what we ran up against in this particular case. Job reference immunity can provide important public policy protections for employers to offer a complete picture of their current and former employee. Future coworkers of prospective employees will also be protected from a candidate who may have previously displayed dangerous behaviors in a previous employment situation that would not otherwise be disclosed without job reference immunity protections. Bad actor employers will not receive immunity protections if they knowingly offer false information or act with malice or reckless disregard of the truth. I can't say that enough, that the bad actor employers will not receive this immunity. Nebraska is one of the few remaining states without a job reference immunity statute. All of our border states have them in place. We had an outstanding public hearing on this. And I'd like to thank the testifiers for the helpful information. Representatives from public schools, school boards, human resource organizations and professionals, local hospitals, transportation and infrastructure professionals, chambers of commerce, pharmacists, small businesses, local banks, value-added ag, meat cutters provided good information for our consideration and voted in...or gave supportive testimony for this bill. Senator Lathrop and I worked a compromise amendment that reflects the language of the state of Arkansas' law on this subject. I'd like to thank the Business and Labor Committee members for their support of this agreement. I've appreciated the committee members meeting me in the middle to make important public policy advances for our state. Again, LB959 is important to our state because it will open the flow of communication between employers and employees. I would appreciate your support for the amendment and the underlying bill. Thank you, Mr. President. [LB959]

SENATOR COASH PRESIDING

SENATOR COASH: Thank you, Senator Janssen. Members, you've heard the opening to LB959. There is a committee amendment. Senator Lathrop, you're recognized to open on the committee amendment. [LB959]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I'm here to open on

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AM2010. This amendment replaces the bill and incorporates an amendment modeled after the Arkansas law concerning employment references. Specifically, AM2010 affords a current or former employer with immunity if certain information is provided upon receipt of a written consent from the current or former employee. The employer is not required but may provide the following information: number one, date and duration of employment; two, pay rate and wage history; three, job description and duties; four, most recent written performance evaluation; five, attendance information; six, results of a drug or alcohol test administered within the last year; next, threats of violence, harassment or threatening behavior related to the workplace or another employee; next, whether the employee was voluntarily or involuntarily separated and the reasons for the separation and whether the employee is eligible for rehire. Employers are presumed, under this amendment, to be acting in good faith and immune from civil liability unless the presumption is rebutted by a preponderance of the evidence that the information was knowingly false or was provided with malice or reckless disregard for the truth. Consent forms are provided during the application process either on a separate form or within the application document if conspicuously indicated in bold...in larger typeface print. The consent must be signed and dated, and is only valid while the application is considered active but in no event longer than six months. The immunity provided shall not apply if an employer discriminates against an employee because the employee exercised a right conferred by state, federal, or case law. I ask for your support of AM2010 and I believe this is a good compromise as it provides protections to both employers and employees. And if can go off script for just a minute and just talk about the concern that Senator Janssen's bill is intending to address and what the amendment does about that, every year since I've been in the Business and Labor Committee, now six, we have had employers come to us and say, we need to be able to provide information because we want to get information on prospective employees, but we're all worried that we're going to get sued in the case that we do that. And as a consequence, the practice across the state is generally to say, yes, Mr. Smith worked for me, he worked for me on these dates and these are his job duties, for example. Employers are nervous about saying he was a terrible employee, I didn't like what he did, he was threatening or harassing other employees, and so they just don't give that. And as a consequence, employers then don't know anything more about a prospective employee from a job reference other than that he worked a former place and the dates and that's about all you'll get anymore. And so I think what we've done with AM2010 is to provide a good middle ground. This immunity will never be conferred on an employer unless the employee signs a written consent and says, I give you, former employer, permission to speak with my prospective employer. You don't want them talking to them, you don't have to sign the consent and the immunity or the presumption provided for in this statute or in this amendment is never conferred. Senator Smith has an amendment which will come next. And I will just say that I fully support that amendment. Thank you. [LB959]

SENATOR COASH: Thank you, Senator Lathrop. You have heard the opening to

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LB959 and the committee amendment. Those in the queue wishing to speak: Senators Hadley, Burke Harr, Smith, and Gloor. Senator Hadley, you're recognized. [LB959]

SENATOR HADLEY: Mr. President, members of the body, in a former occupation this certainly became a problem. Would Senator Lathrop yield to a question? [LB959]

SENATOR COASH: Senator Lathrop, will you yield? [LB959]

SENATOR LATHROP: Yes, I will. [LB959]

SENATOR HADLEY: Senator Lathrop, thank you for your explanation. Just a clarification: In higher education quite often we ask for references. We ask for, say, three references, name, you know, their names, addresses and such as that. Would this bill then apply to that kind of situation? [LB959]

SENATOR LATHROP: It certainly would. But it would, if I gave a...let's say that I'm in higher ed and I'm going through the process and I give out three names of places that I've taught at in the past. The immunities conferred on this bill or in this amendment do not apply unless you, as a prospective employee, sign a consent that says you may speak to my former employer, and the language is right in the bill. If you don't consent to that, they can still call the former employer and the employer can say whatever they want to, but the only protections they have are what is available under current law. [LB959]

SENATOR HADLEY: What happens if it's an employee of the former employer? For example, in higher education it's quite common that you might put down a colleague as a reference. Would this apply to an individual who works for the former employer? [LB959]

SENATOR LATHROP: Let me dissect that. First, I don't think it does because it's not an employer, and this deals with former or current employers. But I don't think you would be listing your former colleague unless you were okay with whatever they expect...they were expected to say. So I don't think it becomes a problem. If you're listing former colleagues, then I expect you expect that they're going to say good things about you. And then the immunity would be unnecessary. [LB959]

SENATOR HADLEY: Okay. And they generally do say you don't list them unless they're willing to say good things. I guess all I will say is that from prior experience, one of the biggest problems now is getting information on potential employees. And the fear of lawsuits and such as that is always hanging out there. And if this in any way can help that situation, I would certainly support the amendment and the bill. Thank you, Mr. President. [LB959]

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SENATOR COASH: Thank you, Senator Hadley. Senator Burke Harr, you're recognized. [LB959]

SENATOR HARR: Thank you, Mr. President. And thank you, Senator Lathrop, for bringing this bill. This reminds me a lot of CIR last year, where there was an issue that needed to be handled in a proper way with serious contemplation. And I think you did a great job. I know you reviewed a lot of other states before you came up with AM2010. I guess I would just...would Senator Lathrop yield to a question? [LB959]

SENATOR COASH: Senator Lathrop, will you yield? [LB959]

SENATOR LATHROP: Yes. [LB959]

SENATOR HARR: Thank you, Senator Lathrop. And I apologize, I didn't get a chance to talk to you beforehand about this question, and I honestly don't know the answer. If you could help, I would appreciate it. If I sign the waiver as a former employer and my...or excuse me, former employee, and my former employer says, oh, that Burke Harr, I don't know, he showed up late all the time, and in fact I never showed up late, they were just...they hadn't done their due diligence, they went off the top of their mind and they...or what they were thinking and they were negligent. Would there be immunity if that happened? [LB959]

SENATOR LATHROP: No. The immunity can be overcome. What this bill does is creates a presumption that you're acting in good faith. So the statements that you're giving are good faith. That presumption may be overcome by showing, and the burden of proof is a preponderance of the evidence, that someone was...made a statement in reckless disregard of the truth. So if you just pop off and you are careless with the truth or reckless with the truth, the immunity would not be available to you. You would...it would in the first instance, but it would be overcome by overcoming the preponderance...overcoming the presumption with a preponderance of evidence that shows that the person either...I'm looking at the language, is rebutted upon a showing by a preponderance of the evidence that the information disclosed by the current or former employer was false and the current or former employer had knowledge of its falsity or acted with malice or reckless disregard for the truth. If you act in that manner, in the sentence I just read, if you act in that manner you've overcome the presumption and the immunity is not available. [LB959]

SENATOR HARR: Thank you. And thank you again for bringing this amendment. I think this is very good, prudent business practice. Too often in business, individuals or bosses, former employers can't say what they really want. Investing in an employee is a large investment. I think it's important that that employer, the new employer, know as much as possible so they know what and who they're getting so that we can have efficient businesses. So thank you very much. And I support AM2010. [LB959]

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SENATOR COASH: Thank you, Senator Harr. Senator Smith, you're recognized.
[LB959]

SENATOR SMITH: Thank you, Mr. President. And I rise in support of LB959 and also AM2010. And I just wanted to particularly thank Senator Janssen for bringing forward this bill. And, you know, this is a really important piece of legislation for businesses to ensure that they have the best employees, particularly whenever there are safety concerns or particular skill sets that are necessary on a job, to ensure that the employees can fulfill those performance duties. Senator Lathrop mentioned that I did have an amendment. I've asked for that amendment to be withdrawn. And I would like to lay it over and take it back up on Select File due to the lateness of the hour. But I do want to say that it's really important that we strike a balance between the well-being of the employee and the well-being of the employer to ensure that both are treated well. And the amendment that I'm going to bring back on Select File, I've spoken with Senator Janssen, and I think once again it goes towards how much attention Senator Janssen has put into this bill to ensure that the well-being of the employee is protected as well as the well-being of the employer. So I'm looking forward to discussing that during Select. But at this time I do stand in support of AM2010 and LB959. Thank you.
[LB959]

SENATOR COASH: Thank you, Senator Smith. Senator Gloor, you're recognized.
[LB959]

SENATOR GLOOR: Thank you, Mr. President. Good evening, members. I wonder if Senator Lathrop would yield for a question. [LB959]

SENATOR COASH: Senator Lathrop, will you yield? [LB959]

SENATOR LATHROP: Yes. [LB959]

SENATOR GLOOR: Senator Lathrop, to your knowledge as you've worked this bill through committee, is there any reason that an employer couldn't have as condition of employment that a potential employee must sign this release before they move further with making decisions about employing them? [LB959]

SENATOR LATHROP: I don't think that there is a prohibition against that. And as a practical matter, if you won't sign one of these things, I think you better have an explanation for your prospective employer or it's a fair conclusion that you don't want your prospective employer talking to your former employers for some reason. [LB959]

SENATOR GLOOR: Exactly. And that's why there is built into this an opportunity for at least a potential or prospective employer to be red-flagged that something isn't quite

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right. There's an old axiom in personnel management that says the best predictor of future employment is past employment. It's hard to argue, when you've hired enough people, that if they've done a great job in the past they are likely to do a great job for you. But the reverse is also true and that being if somebody has been a problem elsewhere, they're going to be a problem for you. I appreciate Senator Janssen bringing this bill forward. I appreciate Senator Lathrop, Business and Labor moving this bill forward also. I had a general theory that I would give references on any employee, regardless of whether their performance was good or bad, and continued to do that even after legal counsel told my human resources department to only give, as Senator Lathrop pointed out, some very specific information about dates of employment and status that they were discharged. I was always open to spilling everything I knew about an employee, especially a problem employee, because I have an ethical issue of not wanting to foist a poor performer on anybody else. But I would be...I have to tell you that I did so under some degree of fear that it might come back and haunt me since HR legal counsel didn't much like that going on. I don't think they realized what I did. Certainly, certainly, (laugh) this would have relieved some of the concern that I had at that point of time. And because of that, I think it's a great bill, long overdue. And it's not often I wish I could go back and relieve certain components of my life, but doing job references on individuals with this in place would have saved me a lot of concern when I filled in employees...or future employers about the potentials they may face with somebody who had worked for us in the past. And, therefore, I support AM2010 and LB959. Thank you. [LB959]

SENATOR COASH: Thank you, Senator Gloor. Those still wishing to speak: Senators Carlson, Wallman, Karpisek, and Council. Senator Carlson, you're recognized. [LB959]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. I think that Senator Janssen brought forth a good bill and that the Business and Labor Committee, with Senator Lathrop, did a good job on the hearing and then crafting an amendment that made the bill even more appropriate. I think it's pretty important that an employer or a former employer that's asked for information very clearly may decide not to give it. This bill does not dictate that that information would be given. The employer has a choice. And then it's also important that the employee must give consent for the employer or former employer to provide information to a prospective employer. And even with the signed consent, the employer that's contacted may still decide not to give any information. The burden is on the employee to prove false statements by a former employer and I think that's appropriate. And so I think it's a bill that certainly has my support. A little humorous angle perhaps, there's no penalty for an employer to give a glowing endorsement to a poor performing employee. That's an ethical matter, as Senator Gloor has indicated, but there's not a penalty for that. I do support LB959 and the underlying amendment. Thank you. [LB959]

SENATOR COASH: Thank you, Senator Carlson. Senator Wallman, you're recognized.

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[LB959]

SENATOR WALLMAN: Good evening, members of the body. You know, if you've ever terminated somebody, it can scare the heck out of you. But I think this does allow some protection. I still have some apprehension about it. I like Senator Smith's amendment to also protect employer and employee as well, because when you terminate somebody in a management position you better have a good reason. And so it also makes us more accountable as a hirer, if you hire somebody, and you keep track of what they're doing. But I've given lots of references to people for jobs. And so far, luckily, I think only one has turned out as not satisfactory. So you got to check into their references and I hope the reference, the people that give the reference, would be...have immunity as well, the way I read it in the bill. And I like Senator Smith's amendment as well, before I could really support this bill. Thank you, Mr. President. [LB959]

SENATOR COASH: Thank you, Senator Wallman. Senator Council, you're recognized. [LB959]

SENATOR COUNCIL: Thank you very much, Mr. President. And good evening, colleagues. When I first read LB959, it created some concern for me. And I was just listening to Senator Gloor about the advice his HR department received from legal counsel, and I was reminded there was a position that I was in when I was in-house counsel. And when I looked at LB959 in its original form, one of the concerns that it created for me was the fact that the reason legal counsel recommends to, through human resources, that the references be name, dates of employment, and wages is because they have no control over what people say in the references they give. And the assumptions are that if you limit just to name, dates of employment, position held, that you don't create an opportunity for individuals to come and file legal actions for you giving an improper reference. Now I look at the amendment and I see the consent provision. And it's very specific in terms of what the potential employee is consenting to allow his former employer, his or her former employer to provide. And that provides some degree of comfort. But there are a couple of questions...well, first of all a statement, and I think someone else asked a question that kind of alluded to it. Currently, currently there is nothing that prevents a prospective employer from asking an applicant to consent to that prospective employer asking for additional information from their former employer; nothing that prevents them from doing that now. With a signed written consent, I can't think of any human resource department that would not allow their HR people, the manager, the supervisor, whomever, to provide the information that the employee has consented to be disclosed. The intent of this bill and the purpose of this bill is to provide immunity in those cases where that kind of information is provided. But the reason that these actions and these concerns arise from employers and the reason the human resources department became so conservative was because there was...there is really no way to control what people say, particularly in telephone reference interviews. So one of the questions I have, if Senator Lathrop

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would yield,... [LB959]

SENATOR COASH: Senator Lathrop, will you yield? [LB959]

SENATOR LATHROP: Yes. [LB959]

SENATOR COUNCIL: Page 3 of AM2010, beginning at line 3, says, "Except as specifically amended in this section, the common law of this state remains unchanged as it relates to providing employment information on current and former employees." So what aspects of the common law could have possibly been changed... [LB959]

SENATOR COASH: One minute. [LB959]

SENATOR COUNCIL: ...by this amendment? [LB959]

SENATOR LATHROP: I thought you were going to ask me what's left. You're asking me what's changed? [LB959]

SENATOR COUNCIL: Yes. Well, what's left? [LB959]

SENATOR LATHROP: Or what kind of a cause of action? [LB959]

SENATOR COUNCIL: Either, either way. [LB959]

SENATOR LATHROP: Okay. Let me put it this way, because... [LB959]

SENATOR COUNCIL: What's left? [LB959]

SENATOR LATHROP: ...I was going to bring this up in my close. Under this, say an employee provides an consent, there is an itemization of things that an employer can provide and still be covered by this. What it doesn't permit an employer to do is to engage in certain idle conversation. There are a list of things that you can provide, and it isn't just the, what I'd just call, idle gossip about the person. If that were to happen, it would be outside of this. In other words, if you get outside of the items listed in this amendment, then you are now outside the protections that are afforded under this. [LB959]

SENATOR COUNCIL: Okay. And the common law would prevail there and so if... [LB959]

SENATOR COASH: Time, Senators. [LB959]

SENATOR LATHROP: Yes, sir...or ma'am. [LB959]

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SENATOR COASH: Senator Council, you're now recognized. [LB959]

SENATOR COUNCIL: Okay, so I mean that needs to be clear to everyone that if an employer goes outside of this list, a former employer goes outside of this list and asks questions outside of this list and provides false or...and that's the...under the common law, in order to maintain a cause of action, you still have to establish that the statements that were made about you were false. Am I correct, Senator Lathrop, in your understanding of the common law? [LB959]

SENATOR LATHROP: Yes. [LB959]

SENATOR COUNCIL: Or malicious... [LB959]

SENATOR LATHROP: True. [LB959]

SENATOR COUNCIL: ...and so if an employer, with AM2010, goes outside of this list and makes statements that are false, there's no immunity, correct? [LB959]

SENATOR LATHROP: Right,... [LB959]

SENATOR COUNCIL: Okay. [LB959]

SENATOR LATHROP: ...there wouldn't be because you would be able to overcome the presumption if you are making a false statement and you knew it was false or acted with malice or reckless disregard for the truth. So it's not every false statement, it's false statements that are...that you knew were false, were made with malice or made in reckless disregard of the truth. [LB959]

SENATOR COUNCIL: Okay, but that... [LB959]

SENATOR LATHROP: But if it's outside of the list, of the itemized things... [LB959]

SENATOR COUNCIL: If it's outside of the list it's just false. I mean you don't have any immunity. [LB959]

SENATOR LATHROP: ...and it's false, you don't get the benefit of the presumption. [LB959]

SENATOR COUNCIL: You don't get the presumption. If it's outside the list, you don't even get the presumption, correct? [LB959]

SENATOR LATHROP: I would agree with that. [LB959]

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SENATOR COUNCIL: Okay. Then the other question on that same page, it says the immunity conferred by this section shall not apply when an employer discriminates or retaliates against an employee because the employee has exercised or is believed to have exercised any federal or state authority (sic) right or undertaken any action encouraged by the public policy of this state. So I want to be clear here, because Senator Janssen related the circumstance that led him to this bill. I'm currently dealing with a situation where an individual was terminated. And all of the evidence indicates that she was terminated because of her race and that is a protected class. She filed a charge with the NEOC and filed for...applied for a new position, started the job and then was told, you can't work here because your former employer told us that you filed an NEOC charge. Now under the current common law, I think that person arguably has a cause of action because a protected, concerted right is a protected, concerted right. But is the intent of this to provide immunity to former employers who simply...who advise that a former employee exercised his or her right to file a charge with NEOC? [LB959]

SENATOR LATHROP: I think that's a...fits squarely within (5). [LB959]

SENATOR COUNCIL: So if a former employer tells a prospective employer that employee A, applicant A filed an NEOC charge against us and applicant A finds out that that's the reason they weren't offered the employment, under AM2010 that employer has no immunity, correct? [LB959]

SENATOR LATHROP: True. [LB959]

SENATOR COUNCIL: Okay, and that needs... [LB959]

SENATOR LATHROP: That's my reading, and so whether that's state, federal, or some public policy of the state. [LB959]

SENATOR COUNCIL: Okay, and I want to be clear on that, because just as people have examples of former employers being unable to tell a prospective employers... [LB959]

SENATOR COASH: One minute. [LB959]

SENATOR COUNCIL: ...about problem employees, we also have a problem of former employers preventing employees whom they have discriminated against from accessing future employment by merely providing that information in hopes that the prospective employer will consider that prospective employee as a litigious individual. And that happens as well. The fact that there is a consent here, an informed consent allowing prospective employers to ask this specific list of questions of the former employer, I find AM2010 to make this bill better. But in all actuality an employer today could put in their

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application a request for consent... [LB959]

SENATOR COASH: Time, Senator. [LB959]

SENATOR COUNCIL: Thank you. [LB959]

SENATOR COASH: Thank you, Senator Council. Senator Schumacher, you are recognized. [LB959]

SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. Just briefly here, I know it's getting late, I think as a practical matter this is not going to add very much to the economics and the value of a former employer sharing with a prospective, new employer things that the new employer very much might like to know. It would increase the efficiency of the new employer's operations if he knew them, and also the ability to decide if somebody was a good fit for a particular job. As a practical matter, assuming that a small employer in this state, and that's a lot of us, asks an attorney what they can disclose, the attorney is going to tell them, after reading this, look, make sure you get a consent form; if not, keep your mouth shut, and then go down this laundry list. And this laundry list does not contain very much useful information: date and duration of employment, pay rate and wage history, job description and duties--those are things that are not particularly informative; the most recent written performance evaluation prepared prior to the date of the request--most small employers don't have time to file their taxes let alone maintain written performance evaluations; attendance information; drug or alcohol tests--most small employers don't do those; threats of violence--those things are probably pretty rare; whether they were fired or quit; and whether or not they would rehire them. That is not a whole lot of information. And granted, this says that the common law remains in force as a practical matter if they consult an attorney. That's all the new employer is going to get. And I would tend to think that in some points we might want a more sharing information from the new employer to the old, not in any sense of maliciousness or retaliation but in a sense of making sure the employees are good fits for their jobs and employers have fair access to information in the employment marketplace. That being said, I suppose this is better than what we have now, but I think it leaves a lot to be desired. Thank you, Mr. President. [LB959]

SENATOR COASH: Thank you, Senator Schumacher. Seeing no other lights, Senator Lathrop, you're recognized to close on the committee amendment. [LB959]

SENATOR LATHROP: Thank you. And very briefly, I would disagree with my friend Senator Schumacher in that the characterization that this doesn't provide useful information. I think a prospective employer right now is getting confirmation that a person worked there, probably getting duties, probably getting duration of pay and that's it. That would be the practice and that's what we've heard six years in a row over in the

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Business and Labor Committee about what employers are left to provide after their lawyers get done telling them what they shouldn't be doing. This opens the door. And I think if you were an employer and you went down this...a prospective employer and you went down this list, you would be appreciative of the expansion and the protections. And in particular, I think a prospective employer would find the last performance evaluation of a prospective employee very helpful and useful. I think Senator Janssen brought us an important need of the business community. And AM2010 is a good balance between the employee's interests and the employer's interests. And with that, I would encourage your support. Thank you. [LB959]

SENATOR COASH: Thank you, Senator Lathrop. Members, you've heard the closing to the committee amendment, AM2010. The question before the body is, shall AM2010 be adopted? All those in favor vote aye; all those opposed vote nay. Have all voted who wish? Record, Mr. Clerk. [LB959]

CLERK: 33 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB959]

SENATOR COASH: The committee amendment is adopted. [LB959]

CLERK: I have nothing further on the bill, Mr. President. [LB959]

SENATOR COASH: Returning to discussion on LB959. Seeing no lights on, Senator Janssen, you are recognized to close on the advancement of LB959. [LB959]

SENATOR JANSSEN: Thank you, Mr. President and members. I'd like to thank Senator Lathrop, with his help and his committee's help in getting this bill moved forward and the amendment, and for your vote on that. And also for Senator Council helping build the record on what the bill was not intended to do, in her expertise. And this bill is not out there to protect bad actors. And I'm glad we got a chance to build the legislative record. And with that, I will just ask for your yes vote on LB959. And thank you. [LB959]

SENATOR COASH: Thank you, Senator Janssen. Members, you've heard the closing of LB959. The question before the body is, shall LB959 advance? All those in favor vote aye; all those opposed vote nay. Have all voted who wish? Record, Mr. Clerk. [LB959]

CLERK: 33 ayes, 0 nays, Mr. President, on the advancement of LB959. [LB959]

SENATOR COASH: LB959 does advance. Speaker Flood for an announcement. [LB959]

SPEAKER FLOOD: Thank you, Mr. President, members. Good evening. Thank you for your work today. We're going to go ahead and adjourn at this time. Remember,

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tomorrow we reconvene at 9:00 a.m., that's different than what the schedule said. It's 9:00 a.m. tomorrow morning. And anticipate another late night tomorrow night. Thank you again for your work.

SENATOR COASH: Thank you, Speaker Flood. Mr. Clerk, items?

CLERK: Mr. President, Senator Krist, an amendment to LB1091; Senator Cook to LB1063. Senator Hadley would like to add his name LB1091 as cointroducer. (Legislative Journal pages 1007-1013.) [LB1091 LB1063]

And Senator Flood would move to adjourn the body until Tuesday, March 20, at 9:00 a.m.

SENATOR COASH: Members, you've heard the motion to adjourn until Tuesday, March 20, at 9:00 a.m. All those in favor say aye. Those opposed say nay. We are adjourned.